

# **EXHIBIT 1**

**Plaintiffs' Motion for Relief from  
Nondispositive Pretrial Order of  
Magistrate Judge Regarding Expert  
Disclosure and attached exhibits  
(ECF No. 303)**

[Submitting Counsel on Signature Page]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: SOCIAL MEDIA ADOLESCENT  
ADDICTION/PERSONAL INJURY  
PRODUCTS LIABILITY LITIGATION

Case No. 4:22-md-03047-YGR

MDL No. 3047

Honorable Yvonne Gonzalez Rogers

This Document Relates to:

**PLAINTIFFS' MOTION FOR RELIEF  
FROM NONDISPOSITIVE PRETRIAL  
ORDER OF MAGISTRATE JUDGE  
REGARDING EXPERT DISCLOSURE**

ALL ACTIONS

Pursuant to Federal Rule of Civil Procedure 72(a) and Civil Local Rule 72-2, Plaintiffs respectfully seek relief from Section 7.6 of the Protective Order (“PO”) entered by Magistrate Judge Thomas S. Hixson.<sup>1</sup> Dkt. 290; *see also* Dkt. 289 (associated Discovery Order). Plaintiffs ask the Court to find that Judge Hixson erred in requiring advance disclosure of experts to whom the Parties intend to provide material designated Highly Confidential. *See* Dkt. 290 at 13–14.

Plaintiffs in the MDL and JCCP have been coordinating to ensure efficiency, avoid duplication, and reduce costs, including as to experts. These efforts will be significantly impeded if Section 7.6 is allowed to stand, in part because Judge Kuhl has indicated (correctly) that early disclosure of experts is not allowed under California state law. Advance disclosure also invades attorney work product. Accordingly, Plaintiffs ask the Court to strike Section 7.6 and replace it with Plaintiffs’ requested provision that prohibits disclosure of highly confidential information only to individual Plaintiffs or officers, directors, and employees of the recipient, subject to certain exceptions, or, in the alternative, with the language from footnote 7 to Section 7.4 of the Model Stipulated Protective Order for Litigation Involving Patents, Highly Sensitive Confidential Information, or Trade Secrets (“Trade Secrets MPO”).

### **BACKGROUND**

On March 17, 2023, the Parties submitted competing proposed protective orders to Magistrate Judge Hixson. *See* Dkt. 192; *see also* Dkt. 111 (CMO No. 3) at 6–7. Plaintiffs submitted a proposal largely consistent with the Stipulated Protective Order for Standard Litigation (“Standard MPO”). Defendants asked Judge Hixson to adopt the Trade Secrets MPO or even more restrictive language. Specifically, Defendants sought a provision preventing Parties from disclosing Highly Confidential material to a retained expert unless the party first identifies and provides extensive information about that expert to the designating party (including information that goes beyond the Trade Secrets MPO).<sup>2</sup> While the provision technically applies to

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<sup>1</sup> Plaintiffs note that Section 7.6 does not apply to Parties’ source code, which the Parties will address in a separate order.

<sup>2</sup> Under the proposal advanced by Defendants and adopted by Judge Hixson, a party is required to disclose “any patents or patent applications in which the Expert has a pecuniary interest, is involved in maintaining or prosecuting, or is listed as an inventor or applicant,” a requirement that does not exist under the Trade Secrets MPO.

all Parties, as a practical matter it only burdens Plaintiffs: the “Highly Confidential” designation applies only when disclosure would create risk of competitive harm, a consideration that does not apply to Plaintiffs, who are adolescents and/or their families. *E.g., id.* § 7.6. (The PO provides that protected health and educational information—the type of sensitive information Plaintiffs expect to produce—is designated “Confidential,” not “Highly Confidential.” Dkt. 290 § 7.3.)

On April 10, 2023, Judge Hixson heard the Parties’ disputes regarding the PO. Stating that he was using the Trade Secrets MPO as the “presumptive starting spot,” Dkt. 247 at 7:19–8:3, Judge Hixson agreed with Defendants’ proposal requiring advanced disclosure of experts, *id.* at 39:3–40:1. Following the hearing, the Parties met and conferred about remaining issues, including early expert disclosure. During this time, Judge Kuhl, who is overseeing the parallel JCCP, expressed concern that the MDL PO may require early disclosure of non-testifying experts, given her view that such a provision would violate California law. *See* Ex. A (5/3/23 JCCP Tr.) at 8:3–6; *Hernandez v. Superior Court*, 112 Cal. App. 4th 285, 297–98 (2003).

On May 12, 2023, the Parties submitted their positions on the remaining disputes, with Plaintiffs requesting that Judge Hixson reconsider his inclination to adopt Defendants’ early expert disclosure provision. Dkt. 271. On May 18, Judge Hixson issued a tentative ruling imposing the provision. Dkt. 284 at 3–4. The Parties then submitted a proposed PO in line with Judge Hixson’s tentative ruling, while reserving their rights to object. Dkt. 287. On May 22, Judge Hixson issued a final Discovery Order on the PO (Dkt. 289) and entered the PO (Dkt. 290) with Section 7.6 requiring advanced disclosure of experts who access material designated as Highly Confidential. Plaintiffs object to the relevant parts of these Orders.

### **LEGAL STANDARD**

The Court may modify or set aside a magistrate judge’s nondispositive order if it is “clearly erroneous or contrary to law.” Fed. R. Civ. P. 72(a). This Court reviews the magistrate judge’s legal conclusions de novo, and it reviews factual findings for clear error. *Guidiville Celgard, LLC v. Shenzhen Senior Tech. Material Co.*, WL 19977072, at \*1 (N.D. Cal. Sept. 27, 2022). A nondispositive order is clearly erroneous if “the court is left with the definite and firm conviction that a mistake has been committed.” *Id.* An order is contrary to law if it “applies an

incorrect legal standard or fails to consider an element of the applicable standard.” *Id.*

## ARGUMENT

### **I. Plaintiffs should not be required to provide advance disclosure of their experts.**

Judge Hixson clearly erred by adopting Defendants’ early expert disclosure provision without a justification for imposing this restriction. The Trade Secrets MPO is an “extremely restrictive type of protective order.” *Johnson v. City and County of San Francisco*, 2011 WL 13377688, at \*1, \*3 (N.D. Cal. Feb. 9, 2011). This case is a mass tort case alleging products liability, not a case over “patents and trade secrets,” where courts in this District typically impose it. *Id.* at \*1. And the animating concern behind the Trade Secrets MPO—that one party should not be able to sue another for breach of its intellectual property rights and thereby gain unfettered access to carefully guarded secrets—is not present here.<sup>3</sup>

Judge Hixson nonetheless ordered Plaintiffs to disclose their consulting experts—and their testifying experts—in advance because he reasoned that “Defendants are entitled to know who has their stuff” (Dkt. 289 at 3). While every party would like to know who the opposing party’s experts are in every litigation, there is a reason that the Federal Rules do not impose an early disclosure: such a requirement would “effectively” and improperly “allow the Defense to vet” all of Plaintiffs’ experts. *Johnson*, 2011 WL 13377688, at \*2. Courts generally decline to intrude on litigants’ strategic decisions and create additional burdens in this manner. *See, e.g., Corley v. Google, Inc.*, 2016 WL 3421402, at \*3 (N.D. Cal. June 22, 2016) (“the identities of non-testifying experts . . . is ‘central to lawyering strategy’”; “[v]irtually any large company could assert in each of its pending civil cases . . . that non-testifying experts might misuse confidential information”; “it will be significantly more difficult for Plaintiffs to retain qualified non-testifying experts if those experts are not permitted to remain anonymous”); *Todd v. Tempur-Sealy Int’l, Inc.*, 2015 WL 433481, at \*4 (N.D. Cal. Feb. 2, 2015) (early expert disclosure “potentially invades the attorney work product doctrine and removes [a party’s] ability to have non-disclosed consulting experts”); *see also Burt v. AVCO Corp.*, 2015 WL 12912366, at \*4 (C.D. Cal. Nov. 17, 2015) (it

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<sup>3</sup> *See, e.g., Bayside Sols., Inc. v. Avila*, 2022 WL 3215010, at \*2 (N.D. Cal. Aug. 9, 2022) (imposing Trade Secrets MPO in misappropriation case because “the disclosure of [plaintiff’s] trade secrets and confidential business information . . . could result in competitive harm”).

1 “would be contrary to law” to “permi[t] Defendants to discover the identity of Plaintiffs’  
 2 consulting experts). Judge Hixson erred by ignoring these harms.

3 Importantly, although Defendants’ apps contain highly sensitive source code that may be  
 4 subject to discovery, the Parties agreed to deal with source code via a separate order,  
 5 contemplating additional restrictions for it. Thus, the information subject to the Highly  
 6 Confidential designation under this PO will be information Defendants are likely to designate but  
 7 which does not require unusually restrictive protections, such as marketing plans, financial  
 8 documents, and similar documents disclosed in a wide variety of cases. There is no reason to  
 9 impose burdensome restrictions on such non-source code information. *See Corley*, 2016 WL  
 10 3421402, at \*3 (recognizing that source code is different).

11 Indeed, the Trade Secrets MPO implicitly recognizes that not every trade secret case calls  
 12 for such an intrusion on litigation strategy. That MPO contains an alternative provision that  
 13 allows disclosure of highly confidential material “without disclosure of the identity of the Expert  
 14 as long as the Expert is not a current officer, director, or employee of a competitor of a Party or  
 15 anticipated to become one.” § 7.4 n.7. This “optional court-authored provision . . . is  
 16 presumptively valid.” *Corley*, 2016 WL 3421402, at \*3. Although Plaintiffs as well as Snap said  
 17 they would be amenable to this provision (Dkt. 192 at 5; Dkt. 271 at 3), Judge Hixson did not  
 18 address this presumptively reasonable alternative, nor rulings in other cases involving software  
 19 defendants that have found it sufficient to protect parties’ highly confidential, non-source code  
 20 material. *See Corley*, 2016 WL 3421402, at \*3; *Stark v. Patreon, Inc.*, No. 22-cv-3131 (N.D. Cal.  
 21 Aug. 23, 2022), Dkt. 29. This alternative from the Trade Secrets MPO would protect Plaintiffs’  
 22 work product while ensuring Defendants’ most sensitive information remains guarded.

23 Given these significant concerns and the lack of justification for advance expert disclosure  
 24 here, the Court should overrule Judge Hixson’s imposition of Section 7.6 and instead adopt  
 25 Plaintiffs’ proposal or, in the alternative, footnote 7 to Section 7.4 of the Trade Secrets MPO.

## 26 **II. Requiring early disclosure of experts will impede MDL-JCCP coordination.**

27 Imposing Section 7.6 of the PO is also clearly erroneous because it does not consider that  
 28 the early expert disclosure requirement will interfere with coordination between the MDL and

1 JCCP. Counsel for MDL Plaintiffs are actively coordinating with plaintiffs in the parallel JCCP to  
2 efficiently prosecute their actions, including by sharing experts. *See* Jack B. Weinstein & Eileen  
3 B. Hershenov, *The Effect of Equity on Mass Tort Law*, 1991 U. Ill. L. Rev. 269, 289; *see also*  
4 *Manual for Complex Litig. (Fourth)* § 20.313.

5 The PO as entered, however, would make it highly impractical to pursue this coordination  
6 and achieve these efficiencies with regards to experts. This is because, as Judge Kuhl indicated  
7 during the May 3 JCCP status conference, California law does not “allow[] the identity of a  
8 nondesignated expert to be required to be disclosed to a party opponent.” Ex. A at 8:3–6; *see*  
9 *Hernandez*, 112 Cal. App. 4th at 297–98 (experts’ identity “remains privileged *until* they are  
10 designated as trial witnesses”) (emphasis added). With this PO provision in place, either the JCCP  
11 plaintiffs will have to disclose their experts early (contrary to what Judge Kuhl indicated  
12 California law permits) or Plaintiffs will be severely hampered in coordinating efforts (because  
13 they will be limited in their ability to share experts). This catch-22 is unnecessary, particularly  
14 because other provisions in the PO adequately protect Defendants from competitive harm, and the  
15 separate source code order will contain enhanced protections. Plaintiffs also offered to agree to  
16 adopt Judge Kuhl’s suggestion that Parties submit *in camera* their experts’ agreements to be  
17 bound by the Protective Order. Ex. B (3/22/23 JCCP Tr.) at 12:24-27, as well as the  
18 “presumptively valid” language from footnote 7 to Section 7.4 of the Trade Secrets MPO, also  
19 favored by Defendant Snap. It was clear error to ignore the real and serious harms to Plaintiffs’  
20 ability to prosecute their case efficiently, especially in light of these reasonable alternatives.

### 21 CONCLUSION

22 Plaintiffs respectfully ask the Court to replace Section 7.6 of the PO with Plaintiffs’  
23 requested provision or, in the alternative, footnote 7 to Section 7.4 of the Trade Secrets MPO.  
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25  
26  
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28

1 Dated: June 5, 2023

Respectfully submitted,

2 /s/ Lexi J. Hazam

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**ATTESTATION**

I hereby attest pursuant to N.D. Cal. Civil L.R. 5-1 that the concurrence to filing of this document has been obtained from each signatory hereto.

DATED: June 5, 2023

By: /s/ Lexi J. Hazam  
Lexi J. Hazam

# EXHIBIT A

**In the Matter Of:**  
**SOCIAL MEDIA CASES**  
**JCCP5255**

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**MOTION**

**May 03, 2023**

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SOCIAL MEDIA CASES  
JCCP5255, 05/03/2023

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MOTION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT SSC 12

HON. CAROLYN B. KUHL, JUDGE

SOCIAL MEDIA CASES,

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)  
) CASE NO. JCCP5255  
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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SOCIAL MEDIA CASES  
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SOCIAL MEDIA CASES  
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SOCIAL MEDIA CASES  
JCCP5255, 05/03/2023

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MOTION

(WEDNESDAY, MAY 3, 2023)

M A S T E R I N D E X

CHRONOLOGICAL/ALPHABETICAL ORDER OF WITNESSES

(NONE)

INDEX OF EXHIBITS

(NONE OFFERED)

SOCIAL MEDIA CASES  
JCCP5255, 05/03/2023

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MOTION  
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CASE NUMBER: JCCP5255  
CASE NAME: SOCIAL MEDIA CASES  
LOS ANGELES, CALIFORNIA, WEDNESDAY, MAY 3, 2023  
DEPARTMENT SSC 12 HON. CAROLYN B. KUHL  
REPORTER: CHRISTINE KWON-CHANG  
CSR NO. 12143  
TIME: A.M. SESSION  
APPEARANCES: (AS HERETOFORE NOTED.)

(The following proceedings  
were held in open court:)

THE COURT: Good morning everyone here on the  
social media cases, and we'll take appearances in the  
courtroom starting over here, please.

MS. EMMEL: Jennifer Emmel with Beasley, Allen.

MS. CLEOFE: Good morning, your Honor.

Cherisse Cleofe from Kiesel Law.

MS. JEFFCOTT: Emily Jeffcott of Morgan & Morgan.

MR. CREED: Jesse Creed of Panish, Shea, Boyle,  
Ravipudi.

MR. RAVIPUDI: Rahul Ravipudi for plaintiffs.

MR. KIESEL: Paul Kiesel, Your Honor, for  
plaintiffs.

MR. BERGMAN: Good morning, Your Honor.  
Matthew Bergman, Social Media Victims Law  
Center.

THE COURT: Very good. On the defense side in  
the courtroom, please.

MS. DEGTYAREVA: Good morning, your Honor.

Victoria Degtyareva from Munger, Tolles &  
Olson on behalf of Defendant Snap.

MS. PIERSON: Good morning, your Honor.

I'm Andrea Pierson from Faegre Drinker for  
TikTok and Byte Dance.

MR. CHIOU: Good morning, Your Honor.

Christopher Chiou with Wilson Sonsini for  
Google, Alphabet, and YouTube.

MR. DONOHUE: Good morning, your Honor.

Matthew Donahue from Wilson Sonsini for  
Google, Alphabet, and YouTube.

MR. BLASCHKE: Good morning, Your Honor.

Matt Blaschke with King & Spalding for  
TikTok and Byte Dance.

MS. SIMONSEN: Good morning, Your Honor.

Ashley Simonsen from Covington & Burling  
for the Meta defendants.

MR. SCHMIDT: Good morning, Your Honor.

Paul Schmidt, Covington, for the Meta  
defendants as well.

MS. LADDON: Good morning, Your Honor.

Tarifa Laddon with Faegre Drinker for  
TikTok and Byte Dance.

MR. BLAVIN: Good morning, Your Honor.

Jonathan Blavin from Munger, Tolles &  
Olson for Snap.

THE COURT: Very good. You can all be seated.

1           Those of you on LACourtConnect, the clerk  
2 has taken your appearances, and I think those of you in  
3 the courtroom heard those appearances at that time, so  
4 we won't repeat them.

5           Feel free to jump in if you need to,  
6 though, those of you online.

7           And I'm signing the court reporter's  
8 order.

9           Okay. Thank you very much for your joint  
10 report, and there was a request for priority on a couple  
11 of issues, so we'll start with those.

12           So we'll start with a discussion of the  
13 parties' proposed coordination order to coordinate  
14 discovery between the MDL and the JCCP.

15           I'm going to tell you, having read your  
16 thorough discussion of your respective positions, I'm  
17 going to tell you my proposal for addressing the issue,  
18 and then you can talk to me about what I've expressed.

19           So you'll recall this was not an order I  
20 asked for. I've asked for several things, but this is  
21 not one I asked for particularly.

22           If the defendants want to ask the MDL  
23 court to enter an order about how discovery should be  
24 coordinated between the MDL and JCCP courts, that's  
25 fine.

26           I have not spoken with Judge Gonzalez  
27 Rogers about this. I know she has been traveling.

28           My own experience has been that -- and

1 this goes back to the year 2000 when we started the  
2 complex courts.

3 My experience at creating elaborate orders  
4 to govern in advance future proceedings and how the  
5 future proceedings will be conducted has some downsides.  
6 I've found that -- and I think most of us in complex  
7 have found that it's better to solve issues as they  
8 arise and better decisions can be made in concrete  
9 situations.

10 I feel confident there will be good  
11 communication between the lawyers in this case and the  
12 lawyers in the MDL. I feel confident there will be good  
13 communication between myself and Judge Gonzalez Rogers.

14 So what I propose to do is the following.  
15 I'd propose that the minute order for today set forth  
16 several general principles that I think everybody agrees  
17 on, and for the present that would be sufficient for  
18 this case.

19 At this time, depending on what the  
20 federal court does, something else may be required, but  
21 I would propose to set forth in today's minute order the  
22 following principles: One, discovery in the MDL and the  
23 JCCP should be coordinated; two, discovery requests  
24 served and responded to in the MDL will be treated as  
25 though served and responded to in the JCCP; and, third,  
26 this Court will allow discovery in -- will not allow  
27 discovery in this case that duplicates what has taken  
28 place in the MDL.

1                   So then if the defendants want this Court  
2 to enter additional orders on this topic, defendant  
3 should provide plaintiffs with a list of such proposed  
4 orders or topics, proposed order, and meet and confer.  
5 Absent an agreement, you'll let me know in a joint  
6 posting or in a future status conference report.

7                   I'll have an informal discovery conference  
8 on the issues, and then absent informal resolution,  
9 defendants could file a motion with this Court.

10                  So I'll hear from counsel on either side  
11 on this proposed action by this Court at this time.

12                  MR. BLASCHKE: Your Honor, Matt Blaschke for  
13 TikTok. I'll speak on this behalf of defendants.

14                  I appreciate the Court's comments this  
15 morning. Indeed, the principles that Your Honor just  
16 outlined are embedded in the draft coordination order  
17 that we have been discussing with the plaintiffs for  
18 sometime now.

19                  And as Your Honor noted, there is a  
20 process already in place whereby the proposed order will  
21 be submitted to Judge Gonzalez Rogers, and she'll do one  
22 of three things with that order.

23                  She'll either enter it as proposed, she'll  
24 modify it and enter it, or she won't enter it at all.  
25 And I do think that that will dictate what we do next in  
26 connection with the JCCP.

27                  Your point certainly about not having an  
28 elaborate order that is forward-looking and just not

1 necessary, those comments are well-taken, and our  
2 approach here certainly is not to have a needlessly  
3 elaborate order but rather to streamline the proceedings  
4 and take some commonsense type steps that might help us  
5 do that.

6                   So with your comments in mind, Judge,  
7 we'll proceed, and we'll report back once we've engaged  
8 with the MDL.

9           THE COURT: Okay. Plaintiffs' counsel?

10          MR. CREED: Your Honor, Jesse Creed for the  
11 plaintiffs.

12                   We agree with the Court's approach, and  
13 these all sound -- these three items sound fine to us.  
14 We have no objection to that.

15                   I think on the second item, there might be  
16 an issue where I think -- as counsel for defendant said,  
17 we -- there are things -- there were agreement on  
18 things, and then there was sort of a list that we said  
19 we wouldn't agree to absent a noticed motion, and we  
20 outlined the concepts of what those things consist of in  
21 the joint report.

22                   But I think what was also agreed to was  
23 that any discovery served and responses in the JCCP  
24 would also be applicable in the MDL. That's been agreed  
25 to by the parties as well.

26          THE COURT: Okay. That's fine, but I'm governing  
27 my turf here, so I wouldn't think it would be  
28 appropriate for me to say what is done here -- the

1 binding effect of what is done here should have on the  
2 MDL, so it's probably why I wouldn't do it in the  
3 converse, so to speak. Okay?

4 MR. CREED: Yes.

5 THE COURT: Very good.

6 Okay. So the minute order will reflect  
7 those -- those three principles.

8 So let's turn to the protective order.  
9 Was the order signed by the magistrate judge attached to  
10 the joint report?

11 I don't think I saw it.

12 MS. SIMONSEN: Your Honor, the magistrate judge  
13 has not entered the protective order yet, but he did  
14 hold a hearing on the parties' proposed initial draft  
15 and the disputed issues, and the parties are currently  
16 adjusting the order to reflect his comments at the  
17 hearing and anticipates submitting a revised proposed  
18 protective order in the near future.

19 THE COURT: So it's not final.

20 So let me just address the two issues that  
21 are raised by plaintiffs' counsel, one regarding expert  
22 disclosures.

23 So the Northern District of California has  
24 the extensive experience, probably more than anyplace in  
25 the country, with especially patent cases that have  
26 trade secret and technical information of that sort, and  
27 I certainly respect their understanding of the risks and  
28 protections for highly confidential trade secrets and



1 technical information.

2 My view, without conducting a separate  
3 research for this case, is that I don't think California  
4 allows law -- allows the identity of a nondesignated  
5 expert to be required to be disclosed to a party  
6 opponent.

7 So depending on what is done in the  
8 federal court, this issue will need to be briefed here.  
9 So we can do that now or we can wait, but that, I think,  
10 could be -- well, so that will need to be briefed.

11 So my question for counsel is -- and I'll  
12 move on to the other issue in a minute, but my question  
13 for counsel is how do you want to handle this?

14 MR. CREED: Your Honor, this is Jesse Creed for  
15 the plaintiffs.

16 We agree it would need to be briefed, and  
17 we can do that -- I think if defendants want to draft  
18 the issue, obviously, then we would agree to what is  
19 happening in the MDL vis-a-vis the protective order.

20 If the defendants want to insist on any  
21 provision that would require early disclosure, then I  
22 don't see any need to wait on briefing it.

23 MS. SIMONSEN: Your Honor, we would propose that  
24 once the MDL court enters the protective order in those  
25 proceedings, we meet and confer with plaintiffs on any  
26 revisions that may be required for purposes of these  
27 proceedings, as we've contemplated would be the course  
28 of action all along, and then we present to Your Honor a

1 proposed protective order or competing proposed  
2 protective orders along with letter briefing on any  
3 disputes, and that way we can address all of the issues  
4 at once in the context of an actual proposed order that  
5 would be before -- before Your Honor.

6 THE COURT: Okay. Let's see what the magistrate  
7 judge does, and then we'll move forward from there.

8 And what I'd propose in terms of something  
9 like this, the way I'd like you to do it is either bring  
10 it up in the next status conference and we can talk  
11 about specific briefing or use the message board and  
12 say, you know, "The magistrate judge has entered the  
13 order, and it does require disclosure experts" -- "names  
14 of experts, and here's what we'd propose for briefing  
15 the issue," or just say, "We'd like an informal  
16 conference with the Court to discuss how the issue  
17 should be briefed." Okay?

18 And for purposes of this Court, we don't  
19 do -- we don't do letter briefs. We need something that  
20 can be filed, and so it would have to be either, you  
21 know, an agreed length joint statement where each side  
22 has its portion of the joint statement or simultaneous  
23 briefing by each side on an agreed length. There's a  
24 lot of ways to do it, but it needs to be filed.

25 MS. SIMONSEN: Understood, Your Honor.

26 And I will just for your awareness let you  
27 know that we have had, I think, success doing similar  
28 joint statements when we've submitted proposed orders in

1 the MDL. I think we can certainly do something similar  
2 here in a form that would be acceptable to Your Honor,  
3 and that can be filed.

4 MR. CREED: Your Honor, a note on that.

5 Based on my experience in California  
6 practice, obviously, the appellate courts in particular,  
7 as the Court has had experience with, there's -- when  
8 you're dealing with work product, I think it should  
9 proceed by a noticed motion.

10 So if the defendants want to impose an  
11 order that would require piercing the plaintiffs' work  
12 product, then it should be by a noticed motion.

13 So we will, of course, talk to defendants  
14 if there's an alternative issue, but having dealt with a  
15 stay from the Supreme Court of California with this  
16 Court on various privilege issues, I think that's how we  
17 would prefer to proceed to create the record.

18 THE COURT: Okay. And I'm -- I am open to that.

19 I've also had the unfortunate situation  
20 where it seems like everybody's agreed to simultaneous  
21 briefs and an informal process, and then people say,  
22 "You can't order me, you know, at the last minute."

23 So there's something to what Mr. Creed  
24 says, but under those circumstances, what we ought to do  
25 is sort of agree to shorten time or something so that we  
26 don't have to -- so, you know, notice for a regular  
27 motion here is 16 court days, which is basically a  
28 month, so we could do something quicker if you stipulate

1 to that.

2 MS. SIMONSEN: Your Honor, we're happy to discuss  
3 that with plaintiffs.

4 I think, as Your Honor proposed, an  
5 informal discovery conference first where we can at  
6 least preview for Your Honor any of the outstanding  
7 issues --

8 THE COURT: On this issue, you can say, "We have  
9 had the informal conference." Okay?

10 So -- yeah, it will have to be briefed.  
11 So that's what I need to determine in an informal  
12 conference, is, you know, if I can give a tentative  
13 that's going to satisfy both sides, if I can give a  
14 tentative of, you know, what my understanding of the law  
15 is without briefing as truly a tentative, and then  
16 briefing can go forward.

17 So on this issue, we've talked about it,  
18 so we're going to have to brief it if that's what's in  
19 the federal -- in the federal order and you wanted to  
20 apply it in a similar way here.

21 MS. SIMONSEN: Understood, Your Honor.

22 THE COURT: On the 30 days to designate which  
23 parts of the deposition are confidential, and as I  
24 understand it, the entire deposition would be treated as  
25 confidential for 30 days, and then there would be a  
26 deadline to designate the parts that are confidential  
27 under the protective order.

28 I would say this. I think it's really not

1 very burdensome under California Rule of Court 2.550,  
2 which I have something additional to say about in a  
3 moment, to redact deposition testimony in a brief and  
4 file the brief conditionally under seal, which is what's  
5 required.

6           The party -- the burdensomeness really is  
7 on the party whose information is filed by an opposing  
8 party and is arguably confidential, and then that party  
9 has a greater burden because they have to move to seal  
10 within ten days.

11           And that party, if they want to avoid that  
12 burden of having to move to seal within ten days, can go  
13 through the deposition more quickly and designate the  
14 confidential -- the only parts that should be  
15 confidential before somebody needs to file a motion.

16           And everybody's going to know when motions  
17 are being filed here, so that would -- I would at this  
18 point just leave the 30 days. This is also one of those  
19 really forward-looking issues that by the time it  
20 arises, the parties will have experienced working with  
21 each other, and you may be able to deal with that  
22 informally to avoid burden on both sides when the issue  
23 arises later.

24           So I would just leave the 30 days in there  
25 at this point.

26           MR. CREED: Okay.

27           MS. SIMONSEN: Thank you, Your Honor.

28           MR. CREED: Thank you, Your Honor.

1 THE COURT: Okay. While we're talking about  
2 California Rule of Court 2.550, first of all, no one  
3 enjoys the burden of obtaining permission to seal a  
4 court record, and this Court does not enjoy ruling on  
5 motions about same.

6 However, you know, we are an institution  
7 that lives by its own credibility, and we have  
8 California Supreme Court precedence that is real wisdom  
9 about having an open court system and the importance of  
10 that, and California Rules of Court 2.550, burdensome as  
11 it is, reflects the California Supreme Court's decision  
12 in the CBS case setting forth the importance of having  
13 an open court.

14 And when you study 2.550, which I  
15 recommend to everyone if you haven't done it, you'll see  
16 that there are some places it applies and some places it  
17 doesn't apply, so anything that has to do with solving  
18 discovery disputes, it does not apply -- or that is, it  
19 has an exception for the standards that apply otherwise.

20 You know, so I can't change 2.550, and,  
21 you know, a lot of us have thought about whether  
22 there's, you know, a more expedited way that we could  
23 propose to get through this, but, you know, the Judicial  
24 Council hasn't come up with anything as yet. So I think  
25 we would just go with no separate sealing order. Follow  
26 the Rules of Court.

27 I looked at Exhibit 7 to the joint report.  
28 I don't think it would be sufficient in state court.

1 Critically, it doesn't set forth the standards that  
2 would have to be met by a party seeking to seal, which  
3 is set forth in 2.550, and it's not consistent with  
4 state procedures for how documents are filed  
5 conditionally under seal.

6 By the way, this process is also a --  
7 2.550 is a huge burden on staff as well, so setting up  
8 some new slightly different system would probably not be  
9 helpful since they've mastered that system.

10 So that's my view about sealing. We'll  
11 just -- 2.550, just follow it.

12 MS. SIMONSEN: And, Your Honor, Ashley Simonsen  
13 for the defendants.

14 To be clear, we were proposing not that  
15 Your Honor enter that specific sealing stipulation, but  
16 rather that we would make adjustments to it to account  
17 for 2.550.

18 Certainly, we have no intention of  
19 addressing the substantive standards for sealing in  
20 terms of who bears the burden of establishing a basis  
21 for sealing.

22 Really, the purpose is to try to make it a  
23 little bit easier on everyone in the sense that the  
24 sealing motions would be filed at the conclusion of  
25 briefing on any underlying motion for which there are  
26 multiple sealing motions, but we would not anticipate  
27 there would be any lesser access to information.

28 For instance -- and I think there's --

1 reasonably there would be greater access because ten  
2 days following the submission of a paper for which  
3 certain material may be subject to sealing, the  
4 designating party goes through and redacts it in as  
5 limited nature as possible and then submits it to the  
6 other side to go ahead and put in redacted form on the  
7 record.

8                   In ordinary practices, as Your Honor just  
9 observed, it may be the case that the party filing the  
10 paper that needs to be sealed may sort of overredact  
11 since the information is not their own to defend the  
12 sealing of, but if Your Honor doesn't want us to take a  
13 shot at sort of amending that stipulation to comply with  
14 California rules, certainly we hear you and we'll simply  
15 follow the code.

16           THE COURT: I would suggest following the code, I  
17 really would.

18                   It's -- and, yes, a party filing a paper  
19 will overredact, but that's because under your  
20 confidentiality orders, usually the producing party at  
21 the first stage will overdesignate as confidential, and  
22 we understand why that happens, but then it has to be  
23 unwound at that point, i.e., ten days after, let's say,  
24 the plaintiffs file a motion.

25                   So the -- so I think we ought to -- if you  
26 want to bring it back again, I'll listen, but I think  
27 that's what we ought to do.

28                   By the way, I usually hear those motions



1 at the same time I hear the substantive motion, so we  
2 don't have a separate -- separate appearance, but I  
3 realize it's a lot of work that has to be done  
4 immediately following.

5 But, you know, the Rules of Courts say  
6 that the clerk is supposed to unseal the thing by court  
7 rule if the motion isn't filed.

8 Now, I'll tell you we allow do-overs,  
9 right, if people don't quite make that deadline, but  
10 that's -- that's the rule.

11 MS. SIMONSEN: I understand.

12 THE COURT: What I would suggest is if you come  
13 up with something good, submit it to the Civil Rules  
14 Committee of the Judicial Council as a proposal because  
15 all of us would like our life made easier in some way.

16 Okay. All right. So just noting that you  
17 referenced the deadline for the master complaint, and  
18 that's moving forward. That's excellent.

19 User interface day, so when I was thinking  
20 about a science day, so to speak, regarding user  
21 experiences with various products, I had not thought  
22 about that there would be a temporal problem; that is,  
23 what user experience is over different periods of time  
24 alleged in the complaints or today, for that matter, and  
25 I think it's too complicated before the demurrers are  
26 adjudicated, especially because we have to be so careful  
27 not to run afoul of the rule that facts outside the  
28 allegations of the complaint can't be considered on

1 demurrer.

2                   So I think we should let this issue go for  
3 now, and I'm sorry that people have spent a lot of time  
4 on it. It's something I threw out without thinking  
5 through very well. Perhaps it will be helpful at some  
6 point later.

7                   Okay. The demurrer is scheduled, so I  
8 have looked over the competing schedules and the reasons  
9 for them, and thank you for your efforts to agree, and  
10 even though you didn't agree, the discussions were  
11 helpful for me in thinking about a schedule.

12                   So here's the schedule that I would put  
13 out there as a tentative subject to further argument if  
14 you want to and weighing the competing considerations.

15                   So on or before -- and I put this in the  
16 minute order.

17                   On or before June 2, plaintiffs to  
18 identify three short form complaints that together with  
19 the master complaint would be the subject of the  
20 demurrers, and then July 14 or four weeks after the  
21 Supreme Court decision in Gonzalez versus Google,  
22 whichever is later, defendants will file joint and  
23 individual demurrers.

24                   I have no inside information, but knowing  
25 what the Supreme Court has on its calendar still, my  
26 guess would be it would be very close to June 30 anyway  
27 that they're going to decide this, so really it would be  
28 running four weeks from the Supreme Court decision, but

1 July 14 if they do get it done sooner.

2 And then four weeks after the demurrers  
3 are filed, plaintiffs are to file their opposition, and  
4 three weeks after the opposition is filed, defendants  
5 are to file a unitary reply brief.

6 I would ask for a unitary reply brief. If  
7 at the time I've looked at the opposition from the  
8 plaintiffs and you feel you should have separate ones,  
9 you can let me know, but knowing how these things tend  
10 to work, I think you'll want a unitary reply brief, and  
11 that would be most helpful to me.

12 MR. SCHMIDT: And that's what we're trying to do  
13 both with the opening brief, Your Honor, Paul Schmidt  
14 for Meta, and with the reply brief is to have unitary  
15 briefs.

16 That obviously takes a lot of  
17 coordination, so we appreciate that time, but that is  
18 what we're aiming for. There's a possibility that there  
19 might be companion individual defendant briefs, but  
20 we're going to put as much as we can in unified briefs.

21 In the MDL, we did one unified brief, and  
22 then one defendant had a supplementary brief, and I  
23 would expect -- I would hope that we would get something  
24 very similar here.

25 THE COURT: That would meet my expectations.  
26 That sounds good.

27 So -- now, I say four weeks rather than 30  
28 or 31 days, and the reason is because the Supreme

1 Court -- I'm assuming it's going to run from the Supreme  
2 Court decision.

3 The Supreme Court will issue its decision  
4 on a weekday, and that way when we count weeks, we're  
5 counting weekdays, and we don't have a problem of what  
6 if the 30th or 31st day falls on a weekend.

7 Everyone knows when we're filing. Okay?

8 However, obviously, we don't know when the  
9 Supreme Court is going to decide, and therefore I'm not  
10 setting a hearing date today.

11 So here's what I'd like you to do, and  
12 I'll put this in the minute order. I'd like you to file  
13 a stipulation and proposed order re requested hearing  
14 date after Gonzales versus Google is decided and set  
15 forth the actual dates each brief will be filed, and  
16 also in that pleading, I'd like you to propose or  
17 repropose page lengths.

18 And at that point, the parties will have  
19 been able to see at least some of the briefing in  
20 federal court and perhaps have a better sense of what's  
21 needed for the demurrers here.

22 Based on -- I'll tell you that based on my  
23 current anticipation of what might have to be covered, I  
24 would not anticipate approving a hundred pages, so --  
25 but you can ask again.

26 So if you don't agree on the page length,  
27 I'll consider your positions at that time and make my  
28 own judgment.

1                   So that would be a stipulation and  
2 proposed order setting forth the schedule for the  
3 briefing, asking for the page lengths that you want, if  
4 you agree.

5                   If you disagree, I would suggest you just  
6 set forth your -- your respective positions in that  
7 stipulation even though it's not stipulated to. Okay?

8           MR. SCHMIDT: Your Honor, may I speak briefly on  
9 the page?

10          THE COURT: Yes.

11          MS. SIMONSEN: That is an issue that I think  
12 we'll probably not have agreement on given where the  
13 parties are right now, and I'm mindful about what Your  
14 Honor said about a hundred pages.

15               That's what we used in the MDL with, from  
16 our perspective, much narrower claims that -- we were  
17 moving on 5 claims. Here, we're moving on 14 claims.

18               We had the wrinkle in the MDL that we were  
19 doing all state law, but essentially that played itself  
20 out with a big footnote or string cite listing cases  
21 from different jurisdictions, as opposed to multiple  
22 arguments for us as a defense group to come in much  
23 below that.

24               Given the complexity of the claims here,  
25 given the Section 230 and First Amendment issues we  
26 haven't even briefed yet in the MDL within those hundred  
27 pages, it is really, really challenging.

28               If we were not coordinating on the defense

1 and we each filed our individual briefs, that would  
2 actually play out to many more pages than a hundred  
3 pages across the defense group.

4           It would help to have probably earlier  
5 guidance on that because -- for example, what the  
6 plaintiffs proposed from our perspective is just not a  
7 serious proposal. We can't address facts regarding each  
8 individual defendant, let alone 14 different claims, in  
9 a 300-page complaint in 30 pages.

10           Having some earlier guidance on that might  
11 help us draft because we are starting to draft now with  
12 the hope that we will get a hundred pages, with the  
13 thought that as remarkable as a hundred pages sounds,  
14 it's certainly a big brief, that's from our perspective  
15 going to be hard to reach in terms of the different  
16 arguments we have to present given the complaint that  
17 we've received.

18           THE COURT: Well, draft with the idea in mind  
19 that you're not going to get a hundred pages, but you're  
20 going to get more than 30 pages.

21           Thirty pages is too little for this, but I  
22 don't think I've ever had a hundred-page brief, so there  
23 you are.

24           MR. SCHMIDT: May I bring one other issue on  
25 that, Your Honor?

26           One thing we hadn't anticipated when we  
27 proposed the hundred pages is the choice of law issues  
28 and having to brief choice of law issues.

1           Your Honor no doubt will recall that when  
2 we were here last time, I raised the issue whether  
3 plaintiffs would be moving -- would be identifying  
4 plaintiffs from different states and that that might  
5 implicate choice of law issues.

6           Plaintiffs didn't say they even had  
7 plaintiffs from other states. We've now been told as of  
8 Monday that two or one of the three plaintiffs they plan  
9 to pick are from other states, and that creates a  
10 serious concern as to whether that really advances the  
11 litigation.

12           We have only one other state that has  
13 double digit plaintiffs. Most states have one or two  
14 plaintiffs, and if we get an Oregon or Georgia or  
15 New York plaintiff where there's only one plaintiff in  
16 that state, it doesn't do much to advance the  
17 litigation.

18           But it also adds a wrinkle in terms of  
19 potentially having to brief choice of law which can be a  
20 complicated issue-by-issue question that we need to  
21 brief if we're trying to live within 100 pages for three  
22 plaintiffs with 14 claims.

23           THE COURT: You're going to have that in the  
24 federal court case anyway, aren't you, choice of law?

25           MR. SCHMIDT: In the federal court case, because  
26 we were essentially moving on all states, we didn't have  
27 to do the same level of plaintiff-by-plaintiff analysis  
28 as to what the controlling law is and certainly not the

1 same level of claim-by-claim analysis.

2 Just as an example, in the draft master  
3 complaint, we have -- the plaintiffs pled a California  
4 sex discrimination claim. Presumably, they're going to  
5 shift that for non-California plaintiffs, but that would  
6 be a choice of law issue that we just didn't have to  
7 grapple with in the MDL.

8 And there's similar kinds of statutory  
9 claims that are different across the states where there  
10 are actually significant differences within the states  
11 that we didn't have to address in the MDL that we will  
12 here.

13 MS. JEFFCOTT: Your Honor, we haven't decided  
14 which plaintiffs would be subject to demurrer, but I  
15 think at this time, we -- we anticipate that more likely  
16 that all plaintiffs will be from California, so this  
17 issue may be mooted in its entirety.

18 We obviously don't want to commit to that  
19 at this point in time just because we still have a month  
20 to review additional claims, but we're willing to work  
21 with the defense to the extent that we do select a  
22 non-California plaintiff for a demurrer.

23 THE COURT: Okay. That might fall out or it  
24 might not, but that's something that you'll know by the  
25 time you're asking me for page lengths. Okay?

26 MR. CREED: Your Honor, just one clarification on  
27 the stipulation and proposed order. Maybe this is clear  
28 to others, but I want to make sure I understand.



1           That would be -- so that would be a  
2 stipulation we would file after the Supreme Court's  
3 opinion in Gonzalez?

4           THE COURT: Correct.

5           So once that opinion is filed, we will  
6 know precise dates for the filing of each. So the stip  
7 and proposed order would have two purposes.

8           Purpose number one would be to ask for a  
9 hearing date essentially based on what you now know are  
10 the specific calendar dates, and the second purpose  
11 would be to address the page length issue.

12           All right. Very good.

13           You had a section in the joint report  
14 called "Predicates to Discovery," and discovery's stayed  
15 now as you know, so I don't think I need to do anything  
16 else except now we're going to talk about plaintiff fact  
17 sheets.

18           And I think, first of all, I want to thank  
19 the parties for working on this. It does take a lot of  
20 time. A lot I think can be done between the parties  
21 between now and when the demurrers are argued.

22           I don't know if the plaintiffs are using a  
23 data aggregator. It certainly takes time to work with  
24 that -- with such an entity and to, you know, figure out  
25 the electronic system for the plaintiffs to be entering  
26 their responses electronically.

27           MR. CREED: We do anticipate using a data  
28 aggregator. Which one we use has not been determined.

1 We haven't selected one. We've been talking to Two-1,  
2 so that's the latest update on that, Your Honor.

3 THE COURT: I would really encourage you to --  
4 and, again, sometimes both sides will agree. I don't  
5 know if you will or not, but start early.

6 I've got -- I have another case which is a  
7 mass tort. It's not a JCCP, but it involves thousands  
8 of plaintiffs, and plaintiffs' counsel is telling me  
9 it's taking them months and months and months to work  
10 with the data aggregator to get the electronic system  
11 correct so that the responses are going to be recorded  
12 correctly, so I would get going on that.

13 I know plaintiffs are anxious to move  
14 discovery forward. I would really recommend that you  
15 focus on that.

16 I know that the data aggregator will then  
17 say -- will need time with the specific questions: How  
18 many subparts? Do you jump to the third question?

19 I get all of that, but the process should  
20 be started in my opinion.

21 MS. JEFFCOTT: And, Your Honor, Emily Jeffcott  
22 for plaintiffs.

23 And, Your Honor, we have solicited a quote  
24 from one entity that can do this, and we'll work with  
25 defendants to see if we can come to an agreeable  
26 solution on that end.

27 Some of us on this end have had great  
28 success with certain companies in being able to move

1 through from plaintiff fact sheet all the way through to  
2 the end of the case.

3 THE COURT: Yes, and I don't need -- you all are  
4 sophisticated. I don't need to tell you that the  
5 plaintiff fact sheet has many uses, including post  
6 settlement, if there's -- if there ever is a settlement  
7 and it's an inventory or global settlement, you need to  
8 think through those fact sheets with the far end of the  
9 case in mind, and I know you know that.

10 MR. CREED: Your Honor, on that note, I think --  
11 I think that in order to even discuss having an informed  
12 discuss with a data aggregator, we would need to have a  
13 fixed fact sheet so they understand what questions are  
14 being asked --

15 THE COURT: I don't think so. I think you need  
16 to start with them and get them in place.

17 So the other thing that I would counsel  
18 is, and this applies as much to the defendant as to the  
19 plaintiffs and perhaps more, don't ask too much.

20 If you have too many subparts, it's going  
21 to be difficult for you -- for defendants to ask me to  
22 enforce that adequately, so, you know, think about  
23 something that, first of all, is difficult for a  
24 layperson to understand and has holes in it, and then  
25 you come and ask me to dismiss that plaintiff because  
26 they have those holes, and, you know, they've been asked  
27 to re-respond and they haven't re-responded, are you  
28 going to bring me a half filled out thing that has

1 detail that's missing and ask me to dismiss the claim?

2 That's a hard sell. Okay? So really  
3 limit it to what you need to evaluate the case.

4 Obviously, before any case would go to  
5 trial, you're going to have depositions and IMEs and all  
6 kinds of things, so don't -- don't overask in the  
7 plaintiff fact sheet.

8 The other thing that I really recommend is  
9 to try them out on laypeople. We're lawyers, and we  
10 have that problem of asking things using our language,  
11 and from defense -- from plaintiffs' standpoint, you  
12 don't want to have to hang over your clients and answer  
13 all those questions about what does this mean.

14 From defendant's standpoint, you don't  
15 want to confront someone in deposition and they say, "I  
16 have no idea what this meant," and then the answers that  
17 you got are not useful.

18 So try them out on laypeople and simplify  
19 and simplify. Okay?

20 MS. SIMONSEN: It's helpful guidance, Your Honor.  
21 Thank you.

22 THE COURT: And I have had -- we've had a lot  
23 of -- a lot of experience with plaintiff fact sheets,  
24 and I always review them too because even if counsel  
25 agree, there are things there that maybe I can see that  
26 counsel haven't thought of. So those are my  
27 suggestions.

28 I would propose to do this and to ask that

1 by August 1 the parties submit competing proposed fact  
2 sheets for the Court's review and comment.

3 Now, hopefully you'll have met and  
4 conferred and, you know, eliminated as many issues as  
5 you can, but at that point, I would be able to give you  
6 kind of a check-in and my thoughts about it to send you  
7 back to the negotiating table if you haven't -- if you  
8 haven't agreed.

9 Does that sound reasonable?

10 MR. CREED: It does, Your Honor.

11 Could we also include in that discussion  
12 document -- plaintiffs' specific document request that  
13 we would make?

14 THE COURT: Yeah.

15 Ordinarily -- well, to me the plaintiff  
16 fact sheet includes document requests that are -- it  
17 would be in the fact sheet; right?

18 MR. CREED: No.

19 These are the -- there is document  
20 requests in the fact sheet that the defendants had  
21 proposed, and we have provided an edit yesterday to it.

22 These are the document requests that we --  
23 plaintiffs would propound on defendants for plaintiffs'  
24 specific documents that would inform the plaintiffs when  
25 they're -- when they're completing the fact sheet.

26 THE COURT: Yeah, I haven't seen that picked up  
27 in this -- in the joint report, but I continue to think  
28 it's a good idea.

1 MS. SIMONSEN: And, Your Honor, if I may, I know  
2 at the initial status conference you had suggested, in  
3 connection with negotiating a plaintiff fact sheet, that  
4 plaintiffs might suggest a very limited universe of data  
5 that they might request from the defendants.

6 Purely for the purposes of ensuring they  
7 have access to data that they wouldn't otherwise have  
8 access to that maybe is needed to complete the fact  
9 sheet, we received from plaintiff last Friday a  
10 voluminous list of document requests, all documents  
11 relating to everything under the sun relating to these  
12 plaintiffs, third parties.

13 I do not, respectfully, believe it was  
14 within the spirit of what Your Honor had contemplated at  
15 the first status conference. I also would note that  
16 Your Honor did observe that any motion to compel  
17 relating to those initial data requests should happen  
18 after the demurrers are resolved, which we do think it's  
19 consistent with the fact that discovery is stayed.

20 We think we can negotiate the plaintiff  
21 fact sheet, and as we get guidance from Your Honor on  
22 the plaintiff fact sheet and how that's coming along, I  
23 think that will in turn inform potentially the user data  
24 request plaintiffs are making. So I would propose we  
25 not make that part of the plaintiff fact sheet  
26 discussion, but rather take it up after we're further  
27 along on the plaintiff fact sheet.

28 THE COURT: I'm glad you're continuing to discuss

1 the potential for information to be provided prior to --  
2 prior to the plaintiff fact sheet.

3 I think they go hand in hand, so I would  
4 ask you, again, on August 1 to let me know where you are  
5 on those as well.

6 And, you know, if this -- I'll just say  
7 it. Plaintiffs, if this production of documents is  
8 going to serve the purpose we want it to serve, it has  
9 to be narrow and pointed at what the plaintiff would  
10 reasonably want to see to refresh recollection to answer  
11 the plaintiff fact sheets. That's what I'm  
12 contemplating.

13 MR. CREED: Your Honor, we received an 88-page  
14 fact sheet that requested voluminous --

15 THE COURT: I understand.

16 MR. CREED: Every one of their requests can be  
17 tied to a particular question.

18 We served back, I think, a 20-page fact  
19 sheet. I may be off by a couple pages. We have an  
20 edited list of our document requests that would  
21 correspond with our fact sheet that would be  
22 significantly smaller.

23 THE COURT: And I think it's smart for plaintiffs  
24 to present their own proposed fact sheet too. I think  
25 in some ways, plaintiffs' counsel are -- have a better  
26 perspective on what the fact sheet ought to look like.

27 So you'll go back and forth, and August 1  
28 I'll take a look at it and see where you're at. Okay?

1                   So on August 1, we'll put in the minute  
2 order today the parties are to submit competing proposed  
3 fact sheets to the Court for review and document -- and  
4 comment -- for the Court's review and comment, and  
5 plaintiff -- and -- and proposed early production by  
6 defendant of limited documents relevant to plaintiffs'  
7 ability to respond to the fact sheets.

8                   Okay. So you'll submit that.

9                   What I'm going to do is what we call in  
10 our system a nonappearance case review, and that means  
11 that -- and I'll set that for August -- August 4.

12                  That means that on August 4, I'll open up  
13 the electronic file and look for this filing that you  
14 all have done, so I'm envisioning that this would be  
15 sort of a cover sheet that would say, you know,  
16 plaintiff and defendants' proposed fact sheet, et  
17 cetera, and that it would attach as exhibits your --  
18 now, if you can get to the point where you have a red  
19 line, that would be even better.

20                  Okay? All right? So that's what that  
21 would be.

22                  And then what I'll do on August 4,  
23 nonappearances, take a look at that, and maybe we've got  
24 a status conference coming up in ten days, and we'll  
25 talk about it at the status conference, and I'll let you  
26 know or maybe I'll set a separate conference to talk  
27 about the fact sheets. Okay?

28                  MS. SIMONSEN: That's helpful, Your Honor.



1 With respect to the user data requests,  
2 would it be helpful -- I know there are certain  
3 categories of data that plaintiffs are requesting, and  
4 we as defendants know that they have access to that  
5 information through their own social media accounts.

6 In order to explain to Your Honor why our  
7 proposed initial user data requests, if we do think any  
8 are appropriate, are limited in the way that they are,  
9 would it be helpful for us to submit any kind of short  
10 briefing or explanation on that issue for Your Honor?

11 THE COURT: I think what would be most helpful is  
12 to just have, you know, the documents.

13 In the cover sheet, you can each use a  
14 page maybe to set forth where you're at and why, so to  
15 speak, but I should be able to discern the issues.

16 And -- anyway, and if you have that  
17 information about the individual accounts, why don't you  
18 give it to them now?

19 Okay. But after the demurrer. Right. I  
20 understand. We've got a demurrer coming up.

21 MS. SIMONSEN: My point only, Your Honor, is that  
22 they actually have access to the information, and we  
23 have our first meet-and-confer on this issue scheduled I  
24 believe for tomorrow, and so we'll be walking them  
25 through that so that they understand what they already  
26 have access to, right, in order to complete these  
27 plaintiff fact sheets.

28 THE COURT: Okay.

1 MR. CREED: We disagree, but I'm not going to say  
2 anything further.

3 THE COURT: That's fine. That's fine.

4 Well, you know, we all know that in  
5 discovery the fact that one side has it doesn't mean the  
6 other side doesn't have to give it, ultimately, but --  
7 okay.

8 This bring us to the plaintiff  
9 preservation form, and I think as I may have said  
10 earlier, but if I haven't, I'll say now, I think both  
11 sides have a lot to lose if this isn't done properly.

12 So here is what I'd propose. I'd propose  
13 that the parties submit an agreed form -- and we know  
14 what this is about, right, the plaintiff preservation  
15 form?

16 This is a form that the plaintiffs would  
17 fill out to give to the defendants with respect to what  
18 the plaintiffs know about their accounts so that -- what  
19 they know at this point in time about those accounts so  
20 that the defendants are on notice as to -- of that  
21 information so that defendants can feed that into their  
22 evaluation of what their document preservation  
23 responsibilities are. Okay? That's what this is about.

24 So I would suggest that I have you submit  
25 either an agreed form or competing proposed forms by  
26 May 26th, together with a proposal from plaintiffs as to  
27 when they're going to complete the forms.

28 In other words, you know, okay, now if we

1 have agreed on a form, there should be a deadline,  
2 right, for plaintiffs to individually complete these  
3 forms. Okay?

4 And then if there's not an agreement, I'll  
5 have a conference hopefully very quickly to resolve  
6 this. If we need some briefing, I'll give you a chance  
7 for briefing.

8 So when I have these conferences on a  
9 particular subject, you know, if I can mediate a  
10 solution, that's great. If I can't, then I'll say  
11 here's how we're going to brief whatever issues we know  
12 are remaining at that point.

13 Does that work for you?

14 MR. CREED: Yes, it does.

15 Just really quick, at the last hearing I  
16 think Your Honor turned to us and said get them the  
17 information really quickly, so we've actually turned  
18 over the information requested on the form for many of  
19 the --

20 THE COURT: I understand that, and I get that  
21 there's -- yeah. I get that, but I think it's going to  
22 be far preferable in the long run to have something  
23 that says, "Here's what needs to be turned over," so  
24 that can be tracked in every case.

25 MR. CREED: We will do it.

26 I think our goal though in giving the  
27 information quickly is we understand that the  
28 accounts -- there may be some -- they might be ephemeral

1 in some respects, so we want to make sure by giving the  
2 following, we've triggered the preservation obligation,  
3 whether it's on some form or separately from the forms.

4 THE COURT: I haven't made any order. Right?

5 The preservation responsibilities are what  
6 they are, so -- yeah. Okay. So -- all right.

7 By May 26th, parties are to submit an  
8 agreed plaintiff preservation form or competing forms  
9 together with the proposal for when the plaintiffs will  
10 provide completed forms.

11 So you'll file that May 26th, and for me I  
12 will set June 1 as a nonappearance case review, so I'll  
13 look at that on that day and see what needs to be --  
14 whether there needs to be an informal conference or  
15 whether I just tell you go ahead with what you've agreed  
16 to. Okay?

17 MS. SIMONSEN: Thank you, Your Honor.

18 THE COURT: And if you agree to something  
19 earlier, just, you know, submit it as a proposed order.

20 MR. CREED: I think we are largely in agreement.  
21 We're just --

22 THE COURT: Okay. Now you've got a deadline.

23 Okay. All right. The CSAM preservation  
24 order, looking at those, and those were attached to the  
25 joint report, it didn't look like there was a whole lot  
26 of agreement.

27 Am I reading that correctly?

28 MS. SIMONSEN: Well, Your Honor, if I may, there

1 actually is one important area of agreement since we  
2 last brought this issue to Your Honor.

3 I know at the outset of these proceedings,  
4 both sides raised the issue of the complication around  
5 preserving CSAM which is contraband.

6 The parties having met and conferred I  
7 think quite productively on this are now in agreement  
8 that the defendants cannot preserve actual CSAM without  
9 running afoul of federal criminal law, so we've instead  
10 started to negotiate alternatives to the preservation of  
11 the actual CSAM as plaintiffs had originally thought  
12 might be possible.

13 So what we're now discussing is are there  
14 alternative ways we can ensure the CSAM itself isn't  
15 destroyed, and what plaintiffs initially proposed to us,  
16 which I think makes some good sense, is that each  
17 defendant represent that in the ordinary course of their  
18 reporting practices to NCMEC, they actually submit the  
19 CSAM itself with their NCMEC reports.

20 And defendants' understanding is that  
21 NCMEC maintains the CSAM indefinitely, so it's being  
22 preserved at NCMEC, and for that reason, defendants  
23 believe that the concerns that animated both sides  
24 raising this in the first instance and Your Honor's  
25 concerns are really resolved, they're addressed.

26 Now, it is in defendants' sole discretion  
27 whether to submit actual CSAM with NCMEC reports, but  
28 all four defendants, to address plaintiffs' concerns and

1 Your Honor's concerns, have investigated and now have  
2 made the representation to plaintiffs that they do  
3 report the actual CSAM with the NCMEC reports.

4 They have, furthermore, agreed in  
5 connection with meeting and conferring on this CSAM  
6 preservation order that they would inform plaintiffs to  
7 the extent that their NCMEC reporting practices change  
8 in such a way that they longer report the actual CSAM  
9 with the report.

10 And we would submit, Your Honor, that that  
11 really resolves the issue because all that remains after  
12 you account for the fact that the actual CSAM can't be  
13 preserved by the defendants but is being preserved by  
14 NCMEC is information relating to the CSAM, and the  
15 parties are in the course of and have made, I think, a  
16 lot of good progress negotiating a separate preservation  
17 order that will cover all of the other types of  
18 information that defendants are preserving in these  
19 cases.

20 And that would include -- just to give  
21 Your Honor an example, for Meta we have explained to  
22 plaintiffs that we have account snapshots for relevant  
23 accounts that we've identified and that those account  
24 snapshots have certain information in them which we're  
25 sharing with plaintiffs.

26 Some of that information includes  
27 information relating to NCMEC reports, and therefore we  
28 can negotiate in the context of that preservation order,

1 that broader preservation order, what type of  
2 information defendants are preserving not only about  
3 CSAM related information but all of the other  
4 information that is relevant in these cases.

5 THE COURT: So for the record, could you -- and  
6 for me, could you give the full name of NCMEC, is it?

7 MS. SIMONSEN: I believe it's the National Center  
8 for Missing and Exploited Children.

9 THE COURT: Okay. Let me ask --

10 MR. CREED: It's a nonprofit that's been charged  
11 by Congress to effectively handle these reports.

12 THE COURT: Okay. Would they make the  
13 information -- I mean, these are pictures; right?

14 MS. SIMONSEN: Yes.

15 THE COURT: It could be other things I suppose,  
16 but --

17 MS. SIMONSEN: When we're talking about the  
18 actual CSAM, we're talking about photographs. I think  
19 it could also potentially be something that's not a  
20 photo -- I'm not certain about that, so I don't want to  
21 represent, but it's not, for instance --

22 THE COURT: There's so many things that we don't  
23 know about what reality might -- reality mirroring  
24 images or other things that might come about.

25 Is there any -- and I want to hear  
26 plaintiffs in a minute, but is there any understanding  
27 about the willingness or ability of the National Center  
28 for Missing and Exploited Children to provide that

1 information to plaintiffs, for example, at trial if the  
2 Court had found that it was admissible evidence?

3 MS. SIMONSEN: I would -- I believe that the  
4 plaintiffs have looked into that question.

5 My understanding from what they've  
6 reported to us is that through other law enforcement  
7 agencies, it may be able to be obtained, but we have not  
8 ourselves investigated that question.

9 THE COURT: Okay. Let me hear from plaintiffs.

10 MR. CREED: For this issue, Your Honor, Chris  
11 Ayers who is on LACourtConnect has been taking the lead,  
12 so I'd defer to Mr. Ayers on the topic.

13 MR. AYERS: Good morning, your Honor.

14 This is Chris Ayers on behalf of the  
15 plaintiffs.

16 So the issue -- the issue with the CSAM  
17 generally is that, yes, the parties can continue to hold  
18 it indefinitely and must report it.

19 Defendants have the ability to report it  
20 to NCMEC which would -- which is a repository for it  
21 that only works with law enforcement, so the plaintiffs  
22 themselves and counsel do not have direct access to any  
23 of the actual CSAM that is submitted and disclosed by  
24 the defendants.

25 And so what the current dispute is really  
26 about is providing -- prior to the defendants' deletion  
27 of the CSAM images or video, the child pornography that  
28 they possess, before they delete it, that they provide



1 notice to us and also with key information surrounding  
2 the evidence that can be provided, such as what type of  
3 image it was, what the contents of it were, the  
4 information about the victim, information about the  
5 alleged abuser, so any information surrounding this, and  
6 that that information be provided to the plaintiff, and  
7 also that we would get realtime notice to the actual  
8 deletion of the CSAM so that we can work with law  
9 enforcement to make sure that all the evidence about the  
10 CSAM is preserved.

11 Because what we are talking about is,  
12 while it's lawful, the destruction of the key evidence  
13 that's going to be in this case, and so that's what the  
14 current dispute is about.

15 We understand that defendants do submit  
16 the CSAM to NCMEC, but from there, we don't have direct  
17 access to it with NCMEC.

18 We've had numerous calls with NCMEC  
19 personnel, and they indicated that they cannot by  
20 statute provide it because they're only this nonprofit,  
21 this lawful means of transitioning that to law  
22 enforcement. We do not have access to it there, and  
23 they cannot make it available to us there.

24 So the current dispute is about making  
25 sure that we have the plaintiffs' key information  
26 surrounding the actual CSAM that we have. That would be  
27 evidence that would be admissible and useful in this  
28 litigation.

1 THE COURT: Okay. So what do you want me to do  
2 about this issue?

3 MR. AYERS: I believe the parties are going to be  
4 briefing the issue, and so you'll be able to fully  
5 understand the parties' positions, and you have the  
6 current CSAM orders proposed now.

7 THE COURT: They have very little overlap, the  
8 proposed orders --

9 MS. SIMONSEN: And, Your Honor --

10 THE COURT: -- based on my -- based on my  
11 relatively quick review.

12 MS. SIMONSEN: If I may respond to points that  
13 Mr. Ayers made about plaintiffs' proposed preservation  
14 order?

15 What plaintiffs have proposed, having  
16 recognized that defendants cannot preserve actual CSAM,  
17 is that we actually have human reviewers I believe is  
18 their proposal or create some kind of new AI that can  
19 look at every single piece of CSAM that is being  
20 reported to NCMEC and create a summary of it, which  
21 would revictimize the victim of CSAM.

22 It would also run directly counter to the  
23 reporting statute which expressly lays out that the  
24 extent of viewing of the CSAM after it is detected and  
25 reported should be extremely limited, only for purposes  
26 of reporting.

27 It's also impracticable to do that.  
28 Defendants' reporting systems are largely programmatic.

1 They detect CSAM through -- through machine learning  
2 models -- I may be using the wrong terminology, but most  
3 of it is not done through human review of actual CSAM.

4 Furthermore, it's not linked to some  
5 separate set of accounts that may be determined to be  
6 relevant in this litigation such that we could either  
7 practicably give notice to plaintiffs when CSAM is  
8 reported in connection with a user account or determine  
9 whether this description of the CSAM has to be generated  
10 again.

11 The only way we can see that that would be  
12 done would be through some kind of human review  
13 revictimizing the victim, and so for those reasons, we  
14 don't think that either of those proposals --

15 THE COURT: Does federal criminal law preclude  
16 human review?

17 MS. SIMONSEN: No.

18 And there are instances where these  
19 defendants do human review, but what they're proposing,  
20 because of the way our system is set up, it would  
21 effectively require individuals to conduct a manual  
22 review of every single piece of CSAM in the millions --  
23 tens of millions of reports that these defendants make  
24 to NCMEC every year, the vast majority of which will  
25 have nothing to do with this litigation, and it's not a  
26 part of what's required by federal law.

27 In fact, we would submit to Your Honor,  
28 again, that it runs counter to federal law.

1 THE COURT: This is litigation.

2 MS. SIMONSEN: Understood, Your Honor, but -- we  
3 are happy to brief this.

4 There is no litigation exception in the  
5 NCMEC reporting statute despite there being exceptions  
6 for other circumstances.

7 THE COURT: I understand.

8 You have to come to grips with the  
9 question of whether you want in a trial the plaintiffs  
10 to be able to stand up and tell the jury that through  
11 computer means, you destroyed the information that could  
12 show what they need to prove their case.

13 And I could read you -- I don't have it up  
14 here anymore, but the jury instruction on that is  
15 incredibly powerful about destroyed information, whether  
16 it's intentional or not.

17 We need to grapple with this issue in my  
18 opinion in order to protect both sides.

19 MS. SIMONSEN: Understood, Your Honor.

20 I think plaintiffs recognize that we can't  
21 preserve the CSAM, so I don't think that's evenly an  
22 issue of dispute anymore. We have to destroy the CSAM  
23 after we've reported it. It is then preserved by NCMEC.

24 I would submit, Your Honor, I don't even  
25 know how plaintiffs could ever admit this in evidence  
26 because it is contraband. It can't be possessed. It  
27 can't be shown again to an entire jury, which would  
28 revictimize --

1 THE COURT: Have you been to the criminal courts  
2 building?

3 MS. SIMONSEN: Well, in the context of criminal  
4 proceedings, there's an exception, and that is the  
5 exception that I mentioned to Your Honor in the NCMEC  
6 reporting statute for criminal proceedings.

7 These are not criminal proceedings.  
8 There's no exception.

9 THE COURT: So they shouldn't be able to prove  
10 their case if they have a plaintiff who was victimized  
11 by being asked to provide pictures of their private  
12 parts to somebody else? They shouldn't be able to prove  
13 their case?

14 MS. SIMONSEN: I'm not suggesting that they  
15 shouldn't be able to prove their case, Your Honor, but  
16 in this instance there are certain limitations on  
17 evidence that can be used to do that.

18 In this case, of course, to the extent  
19 that there is CSAM in any of these individual user's  
20 accounts, that is something that they could certainly  
21 describe if they were the ones who were the victims, as  
22 opposed to having, for instance, individuals -- that  
23 each of the defendants review tens of millions of pieces  
24 of CSAM revictimizing all of those victims in order to  
25 summarize it in a way that, again, I'm sure there would  
26 then be disputes about whether we adequately summarized  
27 it.

28 In the meantime, we do have these NCMEC

1 reports which, for instance, you know, I think I  
2 would -- we would want to submit this information with  
3 our briefing to the extent that it is highly  
4 confidential information --

5 THE COURT: But the reports can't be linked to  
6 any individual plaintiff.

7 MS. SIMONSEN: Oh, they can because -- and that's  
8 what we can submit more information to Your Honor about,  
9 and this is what I was getting to with this idea of the  
10 broader preservation order covering -- this is  
11 information about these NCMEC reports and the CSAM that  
12 the defendants do maintain and do preserve beyond the  
13 actual CSAM itself, and we're in the process of  
14 discussing with plaintiffs exactly what that information  
15 is.

16 And so it would include, you know,  
17 information I believe about the victim and the  
18 perpetrator. I mean, I would want to confirm that, and  
19 we'd want to submit that to Your Honor.

20 But in addition, there is a way that each  
21 defendant is able to confirm -- if we have, for  
22 instance, say a list of relevant accounts in this  
23 litigation, plaintiff accounts, there's a way to confirm  
24 whether for any particular account there was a NCMEC  
25 report that was made in connection with CSAM that may  
26 have been associated with that account.

27 THE COURT: So you can associate with them with  
28 an individual?

1 MS. SIMONSEN: We can associate NCMEC reports  
2 with an individual, that's right, Your Honor.

3 And so, you know --

4 THE COURT: Even though this AI machine is doing  
5 it, you can associate it with the report?

6 MS. SIMONSEN: Oh, absolutely.

7 What we can't do, Your Honor, is -- and  
8 don't do and we believe would violate the statute is  
9 have an individual human look at the CSAM and summarize  
10 it and describe it before it gets reported to NCMEC,  
11 which is what plaintiff is proposing that we do.

12 And if --

13 THE COURT: All right. Mr. Ayers?

14 MR. AYERS: Yes.

15 What defendants are talking about isn't  
16 actually what the plaintiffs' proposal contemplates.

17 What the plaintiffs' proposal contemplates  
18 is to make sure, because of CSAM in certain context  
19 would have to be deleted following its reporting to law  
20 enforcement or NCMEC, ask them to preserve it past the  
21 90 days.

22 We ask that they make sure that they  
23 preserve prior to deletion and also provide to the  
24 plaintiffs key information, and those are spelled out,  
25 and they also -- those are spelled out not only just  
26 talking about the suspected CSAM itself but talking  
27 about the source of CSAM, suspected offender and victim,  
28 and other identifying information and other additional

1 information.

2 CSAM is admissible in court, and what  
3 happens in the context of using it in court, both civil  
4 and criminal, is that the CSAM images would need to be  
5 redacted, and those would be court personnel.

6 And so if we're talking about admitting,  
7 the Court would need to take acceptance of CSAM images  
8 from law enforcement and then conduct its own redaction  
9 of that for its admissibility.

10 It's obviously a heavy burden on the court  
11 providing such descriptions of the CSAM itself. It may  
12 alleviate some of those burdens and also have information  
13 related to the suspected CSAM that plaintiffs would have  
14 and not have to use law enforcement resources in order  
15 to potentially try to get -- get access to the CSAM from  
16 NCMEC.

17 There are resources for that. Nothing  
18 about providing a description of the CSAM images  
19 themselves would violate anything within the federal  
20 rules, federal law whatsoever, so that's just not  
21 accurate.

22 There are potential ways to provide  
23 descriptive features of these videos. Part of the  
24 description we ask for is including whether it's a video  
25 or image, the number of files, any distinctive features  
26 of the material included in any of their available  
27 metadata. So there are ways to go about this and do it  
28 to make sure that this information is preserved about



1 the CSAM.

2           The preservation order itself that we're  
3 discussing does not tackle this issue directly. What  
4 we're talking about is contraband that the defendants  
5 will not be preserving, will be deleted, and so in the  
6 context of the deletion of evidence, we want to make  
7 sure as plaintiffs that we're able to get all the  
8 details around that deleted.

9           Just as if there was an inadvertent  
10 spoliation issue, they would -- defendants would be  
11 required to describe what evidence was actually -- what  
12 evidence was destroyed, what evidence was lost so that  
13 plaintiffs would have those disclosures.

14           It's commonplace in litigation where  
15 evidence is lost or destroyed, whether lawfully or  
16 otherwise, to provide a description of that information.

17           And what plaintiffs provided in their  
18 order -- in their proposed order is a statutory history,  
19 a little background to explain how the federal law works  
20 in connection with the reporting of CSAM as well as the  
21 preservation of it.

22           And so we believe that the reporting to  
23 NCMEC is a way for the defendants to make sure that this  
24 information is preserved.

25           That said, if there's another means that  
26 defendants would prefer to provide plaintiffs with this  
27 valuable information about the CSAM, we can further  
28 discuss it, but, nonetheless, the plaintiffs have a

1 right to this information about it to make sure we  
2 understand information about the victim itself, about  
3 the abuser, and about the CSAM.

4 MS. SIMONSEN: Your Honor, with the exception of  
5 the description of the CSAM, which I don't really know  
6 what Mr. Ayers means by that, I think we can continue to  
7 meet and confer as we have been to share with him  
8 information about the CSAM that we do preserve, which  
9 some of those items he just mentioned we do preserve,  
10 and we told him that, and we told him that we'll commit  
11 in the preservation order that we're negotiating to  
12 preserve that information in connection with our other  
13 preservation efforts.

14 If Your Honor would prefer, we can go  
15 ahead and put that into a preservation order that would  
16 be entered separately for purposes of CSAM, but I think  
17 further conferral on the description of the CSAM is  
18 probably going to be the nub of the issue.

19 I'll also note, Your Honor, that if  
20 Mr. Ayers is aware of a way in civil proceedings through  
21 law enforcement to admit CSAM, then it's unclear to me  
22 why he wouldn't pursue that route to the extent that  
23 plaintiffs want to introduce this in evidence at trial.

24 I'm not aware that that's permissible, but  
25 to me that seems to be the solution rather than having  
26 defendants create summaries of CSAM, which as I've  
27 described is impracticable.

28 But I do think, Your Honor, additional

1 briefing on this may be the most helpful for Your Honor,  
2 and the parties have proposed submitting something by  
3 May 26th for Your Honor's consideration if that would be  
4 acceptable.

5 THE COURT: So that's fine.

6 I think it probably -- so let me ask  
7 Mr. Ayers.

8 You want to continued to see how close you  
9 can get on this? That would be helpful.

10 MR. AYERS: I think if the parties -- the parties  
11 can continue to meet and confer to see if we can come to  
12 a closer agreement.

13 I will say just quickly in response, you  
14 know, CSAM -- while CSAM has been admitted and is  
15 admissible, there's significant burdens to it, as well  
16 as the access to the CSAM images by plaintiffs counsel,  
17 as well as the victims themselves.

18 Since NCMEC can't -- we can't get access  
19 through NCMEC itself, the defendants' proposal  
20 essentially is to say, "Hey, we're providing the CSAM to  
21 NCMEC which you can't get from NCMEC anyway, and this  
22 isn't admissible in court so tough."

23 And so we are looking for a mechanism to  
24 be able to provide that, use the information about that  
25 CSAM so that it would be usable and useful as evidence  
26 to the Court, as well as to plaintiff.

27 So we're happy to continue to meet and  
28 confer to see if we can find some more common ground.

1 THE COURT: Okay. That sounds fine.

2 So maybe what we should though -- I think  
3 you were proposing simultaneous briefing on what you  
4 were unable to agree with.

5 I think it's probably better for  
6 plaintiffs to bring a motion because if I'm ordering  
7 defendants to do something that is arguably contrary to  
8 federal law in order to meet the requirements of civil  
9 litigation, then it better be based on a noticed motion.  
10 Okay?

11 So let's do it this way. Get as close as  
12 you can, and then, Mr. Ayers, go ahead and file your  
13 motion by May -- by May 26th, and go ahead and submit a  
14 briefing schedule just on Case Anywhere, okay, or you  
15 could do, you know -- you could do it as a stip and  
16 proposed order.

17 Do it on Case Anywhere, and let me know  
18 and then request a hearing date that way. Okay?

19 Give me your briefing schedule and a  
20 hearing date. Okay?

21 All right. So that bring up filing  
22 proposed orders with the court.

23 So you had a proposed order regarding  
24 waiver of formal service, which is fine, but, you know,  
25 it's whatever Attachment 10 is to the joint report.

26 So we don't want the staff to have to take  
27 the joint report apart and get that out and then have to  
28 file it. So when you -- the way our electronic system

1 works is if it has the word "proposed order" in it or  
2 "stip and proposed order," it gets into the work queue,  
3 basically.

4 So file that as a -- as a proposed order  
5 or as a stipulation and proposed order letting me know  
6 that it's agreed to by the parties, and then that is  
7 easier to execute that way.

8 Did my staff have anything else, since  
9 we're talking about proposed orders, that you wanted to  
10 let counsel know about in terms of getting orders to us?

11 THE CLERK: I think that's the most important  
12 part, was that anything mentioned in a report and if  
13 it's proposed, it needs to come into the work digitally  
14 standing on its own so we can process it.

15 THE COURT: Okay. Good.

16 If you have questions, my staff is  
17 wonderful. You can call them, but don't abuse the  
18 privilege. Okay?

19 All right. Call and benefit order,  
20 turning to the plaintiffs, so I talked last time about  
21 the possibility of a consensual agreement among counsel.

22 Have you tried that and failed?

23 MS. JEFFCOTT: The problem we have with that is  
24 there's already an order entered in the MDL that would  
25 essentially hold back 10 percent of most, if not all, of  
26 the cases that are already filed in the JCCP and that  
27 will be filed in the future most likely.

28 And so in order to essentially prevent a

1 double holdback that we would be able to achieve, if we  
2 did a private agreement, we would need something more  
3 formal along the lines of we believe a parallel common  
4 benefit order filed in the litigation that would  
5 explicitly say that there isn't going to be a double  
6 holdback, that there wouldn't be a 10-percent holdback  
7 on cases that are subject to an MDL assessment, and also  
8 that would explain that there would be coordination  
9 between the MDL and the JCCP, and that there could be no  
10 duplicative work, and all of the elements of that we're  
11 trying to seek through coordination that's already  
12 ongoing in the litigation.

13 THE COURT: Can't you do that yourselves though?

14 Because you can agree to something --  
15 well, my position is that that ought to be the case for  
16 both federal and state court, but I don't have anything  
17 to do about federal court.

18 Why can't you take all of those things  
19 you've just said and agreed to them among yourselves,  
20 and then, you know, I can ask that you submit it to  
21 Judge Gonzalez Rogers and see if there is anything she  
22 believes in your agreement that would conflict with her  
23 orders?

24 MS. JEFFCOTT: We can certainly try that.

25 I think one concern we have is that as  
26 additional cases get filed into the JCCP, that we would  
27 have to essentially renegotiate or have those new -- new  
28 parties, new counsel entered into the agreement.

1 THE COURT: You'd have a provision for new  
2 counsel being added, and if you've got a free rider in  
3 the future, there are a lot of reasons why somebody  
4 coming in would not be a free rider, quite honestly, but  
5 maybe there would be a free rider. You could bring it  
6 to the court.

7 MS. JEFFCOTT: Your Honor, we'll work to --

8 THE COURT: Why don't you try to do that?

9 Let me -- sorry.

10 I know this may seem like wasted effort,  
11 why can't I just sign a piece of paper, but ultimately  
12 if I don't have authority to, I can't enforce it anyway,  
13 so -- whereas if you do it by agreement, you know, it's  
14 a contractual arrangement.

15 And so if you're not able to achieve that,  
16 you can come back and file a motion.

17 MS. JEFFCOTT: One question, Your Honor.

18 If we're able to achieve an agreement,  
19 will we be able to submit that as sort of a stipulation  
20 so that at least we've made a record of it?

21 THE COURT: Yes. You'll be able to make a record  
22 of it.

23 MS. JEFFCOTT: Thank you, Your Honor.

24 THE COURT: Yes. Definitely.

25 So if you can't achieve that, you can  
26 bring a motion.

27 I will want to know which counsel are not  
28 in agreement with going along with everyone else's

1 proposal, so to speak, and -- but then you'll have to  
2 brief the authority.

3           There are articles by Professor Charles  
4 Silver of the University of Texas, and I think he just  
5 posted one. I found it online on unjust enrichment  
6 theory. I think he's already written that there's no  
7 authority for common benefit fund theory, and maybe he's  
8 out there by himself on it.

9           I'm aware of the whole history of the  
10 complex litigation handbook on the federal side and that  
11 everyone does it, but there is that -- there are those  
12 arguments that Professor Silver makes, and moreover, and  
13 most importantly here, we'd have to address it under  
14 California law. We have to find a way under California  
15 law.

16           So -- and I just-- I'm not going to preach  
17 on it. I want to be helpful to all parties here, but  
18 for reasons I mentioned last time, it feels very uneven  
19 to me to be issuing orders to make sure that counsel on  
20 one side can get paid.

21           It just doesn't feel right, understanding  
22 however, that when you have multiple counsel, you've got  
23 to find some way of being fair to the people who are  
24 taking the laboring oar, who are the people sitting  
25 here.

26           MS. JEFFCOTT: I think what we're trying to  
27 establish is a mechanism so that we can raise funds to  
28 pursue the litigation and also at the back end make sure



1 that people are compensated for their expenses and time.

2 We appreciate the guidance you've  
3 provided. We'll work through this and report back if  
4 necessary.

5 THE COURT: Yeah, let me know.

6 I'm not totally foreclosing, but -- well,  
7 I've said what I've said, but try to work it out  
8 yourselves, and you may be establishing some new, you  
9 know, mechanisms for going forward.

10 As I'm sure everybody here knows, the  
11 Federal Rules Committee is considering -- the Civil  
12 Rules Committee sent to the Standing Committee rules  
13 about the MDL -- proposed rules by the MDL, and it does  
14 make mention of the common benefit fund there.

15 So if that's -- if those are approved,  
16 which works -- the rules committees work very slowly.

17 If that's approved, then people will point  
18 to that and say that's the authority for it, and maybe  
19 it is. We'll see what they do.

20 Okay. I am happy to add Mr. Kamamoto  
21 (phonetic) to the plaintiffs' steering committee, so if  
22 you'll just file a proposed order on that in that  
23 regard?

24 MS. JEFFCOTT: Yes, Your Honor.

25 THE COURT: Stip and proposed order.

26 With respect to the cases that you  
27 helpfully listed in the joint report, plus the one case  
28 that was mentioned in the Case Anywhere posting as one

1 you've recently agreed should be included in the JCCP,  
2 I've consulted with my clerk, and we think it's better  
3 that the clerk's minute order today just add those cases  
4 on.

5 And apparently there's a new code that  
6 will help the clerk get that organized in the court  
7 system, so let us try that, and then you don't have to  
8 submit a separate proposed order. Okay?

9 MS. JEFFCOTT: Thank you, Your Honor.

10 THE COURT: Good.

11 Then the final thing. This is not  
12 mentioned in the joint report, but I'm adding it on.

13 So I had requested a proposed order  
14 allowing plaintiffs to be named by their pseudonyms. I  
15 did not enter what was given to me, and I really wanted  
16 some more on that.

17 So the things that I need are, I think it  
18 should be limited to plaintiffs who are minors or  
19 plaintiffs who are not minors but who are alleging  
20 sexual abuse because I think those are pretty much  
21 automatic categories for listing people by pseudonyms.

22 And if you accept that limitation, then I  
23 think you can say that there is good cause, and if you  
24 didn't mind looking for a case about the issue of -- the  
25 minors I think is very clear, and the whole dependency  
26 system operates that way, but the issue about adults and  
27 sexual abuse, there's probably a case on that. If you  
28 can cite it, it would be great.

MS. JEFFCOTT: Thank you, Your Honor.

THE COURT: So resubmit that when you can.

So I'll set a next status conference, but before I do that, is there anything else?

MS. SIMONSEN: Your Honor, defendants just wanted to clarify.

I believe the plaintiffs had reported that there are 124 cases in the JCCP. We wanted you to be aware that that is actually a count by plaintiffs of the number of plaintiffs. By our count, there are actually 61 cases in the JCCP.

Plaintiffs have begun filing multi-plaintiff complaints, and that is the reason why there is half the number of cases as there are plaintiffs.

THE COURT: Thank you. I appreciate that clarification.

Sixty-one cases, yeah, and that becomes what we live with in state court because we don't require them to be filed separately, although, trust me, the recordkeeping is much simpler if you can do them separately.

MS. SIMONSEN: And as we've stated in the waiver of service agreement, the defendants of course would reserve the right to take the position down the road, to the extent there are trials, that those should be individual trials and not --

THE COURT: Absolutely. Absolutely.

1 Let me ask plaintiffs.

2 It would be helpful if you would not mix  
3 plaintiffs from different states in one complaint. I'm  
4 not ordering you in that regard, but that would be  
5 helpful.

6 MS. JEFFCOTT: Okay. Your Honor, I'll pass that  
7 along.

8 THE COURT: Okay. Thank you.

9 Anything else?

10 MS. CLEOFE: Your Honor, Cherisse Cleofe on  
11 behalf of plaintiffs.

12 Just a point of clarification for the  
13 proposed order regarding formal service.

14 Did you need the parties to resubmit that  
15 proposed order, or is the proposed order from the joint  
16 report acceptable?

17 THE COURT: I need you to resubmit it.

18 MS. CLEOFE: Understood, Your Honor.

19 THE COURT: So we're not taking courtesy copies  
20 apart or printing out parts of Case Anywhere things and  
21 separating them.

22 Anything you want entered as an order  
23 should always be filed as a separate document or lodged  
24 as a separate document.

25 MS. CLEOFE: Understood, Your Honor. We'll  
26 resubmit that and the other one.

27 THE COURT: Okay. Appreciate that.

28 Okay. Thank you. Very good work on

1 everybody, and I know you had disagreements, but I think  
2 it will get easier as we go along. Maybe it won't,  
3 but --

4 MR. ORENT: Your Honor, this is Jonathan Orent  
5 for plaintiffs.

6 We have one housekeeping that's come up,  
7 and I suspect others may have the same issue, and I  
8 wanted to raise it before the Court, which is we filed a  
9 stipulation of dismissal along with defendants in a  
10 particular case. This case is 22-CIV-03783.

11 The case was being refiled in the MDL, and  
12 the stipulation of dismissal was rejected by the court  
13 stating that we needed to prove essentially it was a  
14 settlement and that the settlement met the needs of the  
15 minor child, and I just wanted to raise this issue  
16 because this was an instance where we were immediately  
17 refiling in the MDL and wanted to really flag it for the  
18 Court and understand how the Court wanted those types of  
19 issues handled.

20 THE COURT: Minor's compromises will at some  
21 point, if these cases are resolved, consensually be a  
22 big issue, no question about it, but I take your point  
23 that this is just being refiled.

24 Ms. Miro, can you shed any light on this?

25 THE COURTROOM ASSISTANT: Yeah, it actually came  
26 through as a request for dismissal, and I explained to  
27 them that we couldn't dismiss a minor.

28 THE COURT: Okay. So here's what I'd like you to

1 do.

2 I would -- and my staff is correct about  
3 that, but I take your point that you're refileing in  
4 federal court, and I think there is a difference.

5 So why don't you file a document called  
6 Request for Dismissal and Proposed Order, okay, and  
7 explain the circumstances, and that way I can sign it.

8 I can approve the deviation from the --  
9 what would be the ordinary rule if -- but I'll probably  
10 need a declaration stating it's going to be refiled.

11 Does that make sense?

12 MR. ORENT: Absolutely, Your Honor. Thank you  
13 for the clarification.

14 THE COURT: Sorry for the extra work, but we're  
15 serious about our minors' compromises. Okay?

16 Anything else?

17 All right. We can set a further status  
18 conference. Do you have any suggestions?

19 And thank you, by the way, for being --  
20 going along with us and moving this one.

21 I had planned I was going to be in trial.  
22 My case settled, but I was going to do this and then  
23 proceed into my trial, which is why I moved it to the  
24 morning, but the trial is on its way for now.

25 Any suggestions on how long we should wait  
26 before the next -- is there anything in federal court we  
27 should link it to?

28 MS. SIMONSEN: Your Honor, I think at least from

1 the defense side, and I welcome other defendants' views,  
2 that given these upcoming briefing that we'll be doing  
3 on various issues, I think that would probably serve to  
4 address the most immediate issues that we're currently  
5 working through.

6 I think that probably setting a status  
7 conference -- we may not need another one until  
8 potentially after the demurrers are resolved or maybe we  
9 come back to the court --

10 THE COURT: No. You're going to have more before  
11 the demurrers are resolved. I'm going to make sure  
12 these things are moving forward, and we have the August  
13 filing dates and all these things.

14 But if -- Plaintiffs?

15 MS. JEFFCOTT: Your Honor, I think not  
16 surprisingly we find these conferences very helpful.  
17 They keep us moving forward and at a pace I think that  
18 is particularly beneficial to plaintiffs.

19 And so, you know, a month, six weeks,  
20 that's something we would envision as being the next  
21 conference so that we can keep trucking along.

22 THE COURT: Okay. Let me just look at my notes a  
23 minute.

24 We may be able to -- we would set it maybe  
25 at the same time as we're having a hearing on the CSAM  
26 preservation order. Right?

27 MS. SIMONSEN: That makes good sense, Your Honor.

28 THE COURT: But we don't know when that's going

1 to be or indeed if we need it, so here's what I'll do.

2 I'll set for -- let's see. Did I already  
3 set a June 1 appearance I think? Is that the date I set  
4 the nonappearance?

5 THE CLERK: Yes.

6 THE COURT: So June 1, that nonappearance case  
7 will also be re setting further status conference.  
8 Okay?

9 So I'll set it consistent with the hearing  
10 date on the CSAM motion, and then if there's some other  
11 motion that has to come up in that time with that.

12 MS. SIMONSEN: Thank you, Your Honor.

13 THE COURT: So that would be the next date.

14 Plaintiffs' liaison counsel will give  
15 notice. We will get out a minute order that you can  
16 use.

17 MS. CLEOFE: Thank you, Your Honor.

18 THE COURT: Anything?

19 MS. SIMONSEN: Nothing from the defense.

20 THE COURT: Very good. Thank you very much.

21  
22 (The proceedings were concluded.)

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SOCIAL MEDIA CASES  
JCCP5255, 05/03/2023

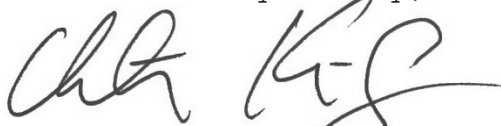
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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3 DEPARTMENT SSC 12 HON. CAROLYN B. KUHL, JUDGE  
4 SOCIAL MEDIA CASES, )  
5 ) CASE NO. JCCP5255  
6 )  
7 ) REPORTER'S  
8 ) CERTIFICATE

9 I, Christine Kwon-Chang, official pro  
10 tempore court reporter of the Superior Court of the  
11 State of California, for the County of Los Angeles, do  
12 hereby certify that I did correctly report the  
13 proceedings contained herein and that the foregoing  
14 pages comprise a full, true and correct transcript of  
15 the proceedings taken in the matter of the  
16 above-entitled cause on May 3, 2023.

17 Dated this 4th day of May, 2023.

18 

19  
20 Christine Kwon-Chang, CSR No. 12143, CRR  
21 Official Pro Tempore Reporter  
22  
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SOCIAL MEDIA CASES  
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SOCIAL MEDIA CASES  
JCCP5255, 05/03/2023

CERTIFIED COPY

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# EXHIBIT B

**In the Matter Of:**

Social Media Cases

JCCP5255

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MOTION

March 22, 2023

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## SUPERIOR COURT OF THE STATE OF CALIFORNIA

## FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 12

HON. CAROLYN B. KUHL, JUDGE

IN RE: SOCIAL MEDIA ADOLESCENT  
ADDICTION**CERTIFIED COPY**CHRISTINA ARLINGTON SMITH, INDIVIDUALLY  
AND AS SUCCESSOR-IN-INTEREST TO

JCCP 5255

LALANI WALTON, DECEASED;  
HERIBERTO ARROYO, INDIVIDUALLY AND AS  
SUCCESSOR-IN-INTEREST TO  
ARRIANA JAILEEN ARROYO, DECEASED;  
CHRISTAL ARROYO, INDIVIDUALLY, AND  
JESSICA WILLIAMS, INDIVIDUALLY AND AS  
SUCCESSOR-IN-INTEREST TO ZAIDEN  
BALDWIN, DECEASED,

PLAINTIFFS,

VS.

TIKTOK, INC.; BYTEDANCE, INC.;  
DOES 1 THROUGH 100, INCLUSIVE,

DEFENDANTS.

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
TUESDAY, MARCH 22, 2023

## APPEARANCES OF COUNSEL:

AMY ESKIN, ESQ.  
CHRISTOPHER AYERS, ESQ.  
CLINTON RICHARDSON, ESQ.  
DAVIS VAUGHN, ESQ.  
DEAN KAWAMOTO, ESQ.  
FELICIA CRAICK, ESQ.  
GLENN DRAPER, ESQ.  
JONATHAN D. ORENT, ESQ.  
KEVIN M. LOEW, ESQ.  
LEXI HAZAM, ESQ.  
MARC J. MANDICH, ESQ.  
MARY LIU, ESQ.  
NARMEEN NKEITI, ESQ.  
SOU SEOK YANG, ESQ.  
ANDREA PIERSON, ESQ.  
DAVID P. KOLLER, ESQ.  
GEOFFREY DRAKE, ESQ.  
MATHEW BLASCHKE, ESQ.

1 APPEARANCE OF COUNSEL:

2 TERESA GRIFFIN, ESQ.

KELLY MCNABB, ESQ.

3 CHERISSE H. CLEOFE, ESQ.

JONATHAN H. BLAVIN, ESQ.

4 CHRISTOPHER CHIOU, ESQ.

VICTORIA A. DEGTYAREVA, ESQ.

5 JENNIFER EMMEL, ESQ.

PAUL W. SCHMIDT, ESQ.

6 ASHLEY M. SIMONSEN, ESQ.

TARIFA B. LADDON, ESQ.

7 JOSEPH VAN ZANDT, ESQ.

JESSE CREED, ESQ.

8 LAURA MARQUEZ GARRETT, ESQ.

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1 CASE NUMBER: 5255  
 2 CASE NAME: SOCIAL MEDIA CASES  
 3 LOS ANGELES, CALIFORNIA; TUESDAY, MARCH 22, 2023  
 4 DEPARTMENT 12 HON. CAROLYN B. KUHL, JUDGE  
 5 REPORTER: BUFORD J. JAMES, CSR 9296  
 6 (REMOTELY)  
 7 TIME: 9:06 A.M.  
 8 APPEARANCES: (AS NOTED ON TITLE PAGE)  
 9 --000--

10  
 11 (FOLLOWING PROCEEDING HELD IN OPEN COURT  
 12 IN OPEN COURT AND VIA L.A. COURTCONNECT)  
 13

14 THE COURT: GOOD MORNING, COUNSEL. WE'RE HERE  
 15 ON THE SOCIAL MEDIA CASES. WE HAVE HAD APPEARANCES OF  
 16 THOSE APPEARING BY L.A. COURTCONNECT. LET ME REMIND  
 17 THOSE APPEARING BY L.A. COURTCONNECT THAT WE HAVE A  
 18 COURT REPORTER IN THE COURTROOM SO YOU WILL NEED TO  
 19 IDENTIFY YOURSELVES IF YOU ARE SPEAKING.

20 AND LET'S HAVE APPEARANCES IN THE  
 21 COURTROOM, PLEASE, STARTING ON PLAINTIFFS' SIDE.

22 MS. MARQUEZ: LARA MARQUEZ GARRETT, SOCIAL  
 23 MEDIA VICTIMS LAW CENTER ON BEHALF OF PLAINTIFFS.

24 MS. CLEOFE: GOOD MORNING, YOUR HONOR,  
 25 CHERISSE CLEOFE FROM KIESEL LAW ON BEHALF OF PLAINTIFFS.

26 MR. CREED: GOOD MORNING, YOUR HONOR, JESSE  
 27 CREED OF PANISH SHEA BOYLE RAVIPUDI ON BEHALF OF THE  
 28 PLAINTIFFS.

1 MR. VAN ZANDT: GOOD MORNING, YOUR HONOR,  
2 JOSEPH VAN ZANDT FROM BEASLEY ALLEN ON BEHALF OF THE  
3 PLAINTIFFS.

4 MS. MCNABB: GOOD MORNING, YOUR HONOR, KELLY  
5 MCNABB FROM LIEFF CABRASER HEIMANN & BERNSTEIN ON BEHALF  
6 OF THE PLAINTIFFS.

7 MS. EMMEL: JENNIFER EMMEL FROM BEASLEY ALLEN  
8 ON BEHALF OF PLAINTIFFS.

9 THE COURT: ALL RIGHT. FOR DEFENDANTS.

10 MS. SIMONSEN: GOOD MORNING, YOUR HONOR,  
11 ASHLEY SIMONSEN FROM COVINGTON & BURLING FOR THE META  
12 DEFENDANTS.

13 MR. SCHMIDT: GOOD MORNING, YOUR HONOR, PAUL  
14 SCHMIDT, COVINGTON & BURLING FOR THE META DEFENDANTS.

15 MS. LADDON: GOOD MORNING, YOUR HONOR, TARIFA  
16 LADDON WITH FAEGRE DRINKER FOR TIKTOK AND BYTEDANCE.

17 MR. CHIOU: GOOD MORNING, YOUR HONOR,  
18 CHRISTOPHER CHIOU WITH WILSON SONSINI FOR GOOGLE,  
19 ALPHABET AND YOU TUBE.

20 MR. BLAVIN: GOOD MORNING, YOUR HONOR,  
21 JONATHAN BLAVIN FOR MUNGER TOLLES ON BEHALF OF DEFENDANT  
22 SNAP.

23 MS. DEGTYAREVA: GOOD MORNING, YOUR HONOR,  
24 VICTORIA DEGTYAREVA FROM MUNGER, TOLLES & OLSON ON  
25 BEHALF OF THE DEFENDANT SNAP.

26 THE COURT: OKAY. VERY GOOD. YOU CAN ALL BE  
27 SEATED. AND MY REQUEST WOULD BE WHEN YOU ARE SPEAKING  
28 PULL UP THE MICROPHONE, AT LEAST. IF YOU WANT TO STAND,

1 THAT'S FINE, BUT THE MICROPHONE IS THE MOST IMPORTANT SO  
2 FOLKS ON THE LINE CAN HEAR YOU. THANK YOU FOR YOUR  
3 JOINT REPORT. IT WAS VERY HELPFUL AND THOROUGH. I HAVE  
4 A LIST OF ITEMS TO RUN THROUGH, AND THEN WE'LL CATCH UP  
5 WITH YOU IN CASE YOU HAVE SOMETHING TO ADD.

6 SO WITH RESPECT TO THE ADD-ON CASES, JUST  
7 TO KEEP TRACK OF EVERYTHING. WE CORRECTED THE CASE  
8 NUMBER FOR THE NU VERSUS META CASE, THE SAN DIEGO COUNTY  
9 CASE, AND THAT WAS CORRECTED IN THE MINUTE ORDER OF  
10 FEBRUARY 23. THERE WAS A PROPOSED ORDER SUBMITTED TO  
11 ADD ON BOYD VERSUS META. THAT WAS FILED JANUARY 27. I  
12 DID NOT SIGN THAT ORDER BECAUSE THAT CASE WAS ORDERED TO  
13 BE ADDED ON IN THE FEBRUARY 17, 2023 MINUTE ORDER.

14 OKAY. AND THEN ATTACHED TO THE JOINT  
15 STATUS CONFERENCE STATEMENT FOR THIS TIME, FOR THIS  
16 DAY'S STATUS CONFERENCE, WAS A PROPOSED ORDER TO ADD ON  
17 SEVERAL ADDITIONAL CASES, AND THAT ORDER INCLUDED THE  
18 TWO CASES THAT ARE ON THE CALENDAR FOR TODAY. AND I  
19 HAVE SIGNED THAT PROPOSED ORDER AND IT WILL BE FILED.  
20 AND THE CLERK IS GOING TO ISSUE ORDERS FINDING THAT EACH  
21 OF THE ADD-ON CASES IS COMPLEX AND ASSESSING THE COMPLEX  
22 FILING FEE. SO I HAD A STAND-IN JA LAST TIME WHO WASN'T  
23 AS FAMILIAR WITH THE COORDINATED CASE PROCEEDINGS SO  
24 THAT DIDN'T HAPPEN, BUT YOU'LL SEE THOSE MINUTE ORDERS  
25 COMING OUT FOR EACH CASE.

26 OKAY. ANY QUESTIONS ABOUT ADD-ON CASES?  
27 AND, AGAIN, THANK YOU FOR KEEPING TRACK. IT'S VERY  
28 HELPFUL. IF YOU ARE CURIOUS, THE REASON WHY THEY GET ON

1 CALENDAR SOMETIMES IS THAT IF JUDGE CUNNINGHAM AS THE  
2 ASSISTANT SUPERVISING JUDGE FOR COMPLEX, IF HE RECEIVES  
3 A CASE WHERE THE BOX HAS BEEN CHECKED FOR COMPLEX, HE  
4 REVIEWS THAT CASE TO DETERMINE WHETHER IT'S COMPLEX OR  
5 NOT AND THEN ASSIGNS IT. IF HE SEES THAT IT IS THE  
6 DEFENDANT'S THAT ARE INVOLVED IN THE SOCIAL MEDIA CASES,  
7 HE WILL THEN ASSIGN IT TO ME, BUT HIS ASSIGNMENT TO ME  
8 DOESN'T ADD THE CASE ON. OKAY. THAT'S WHY SOMETIMES  
9 THEY APPEAR ON CALENDAR AND SOMETIMES, THEY DON'T.

10 OKAY. REGARDING LEADERSHIP STRUCTURE. I  
11 HAVE SIGNED CMO NUMBER ONE REGARDING THE PLAINTIFFS  
12 LEADERSHIP STRUCTURE. THANK YOU FOR ORGANIZING THAT.  
13 AND I SIGNED CMO NUMBER THREE REGARDING DEFENSE LIAISON  
14 COUNSEL. THANK YOU FOR THAT. AND THAT I SIGNED  
15 YESTERDAY, I THINK, SO THAT WILL BE FILED.

16 OKAY. SO MOVING TO BEYOND HOUSEKEEPING,  
17 SO TO SPEAK, THERE WAS ONE THING THAT I MENTIONED LAST  
18 TIME THAT DID NOT GET HANDLED, AND I WOULD LIKE TO RAISE  
19 IT AGAIN. WE TALKED ABOUT A PROPOSED ORDER BEING  
20 PREPARED AND LODGED ALLOWING THE MINOR PLAINTIFFS IN THE  
21 JCCP TO APPEAR PSEUDONYMOUSLY. I MENTIONED THERE IS  
22 RELATIVELY NEW CALIFORNIA AUTHORITY THAT SAYS THAT THE  
23 COURT HAS TO MAKE A FINDING IN ORDER FOR FOLKS TO BE  
24 ABLE TO FILE CASES BY NOT HAVING FULL IDENTIFICATION.

25 GO AHEAD.

26 MS. CLEOFE: GOOD MORNING, YOUR HONOR,  
27 CHERISSE CLEOFE ON BEHALF OF PLAINTIFFS. THE PARTIES  
28 HAVE BEEN DISCUSSING A DRAFT ORDER. WE EXPECT TO FILE



1 THAT DEFINITELY BY THE END OF THIS WEEK BUT PERHAPS AS  
2 SOON AS THIS AFTERNOON.

3 THE COURT: WONDERFUL. AND I AM GOING TO PUT  
4 IN TODAY'S MINUTE ORDER THAT IT SHOULD BE SUBMITTED  
5 WITHIN 10 DAYS, OKAY, GIVE YOU TEN DAYS TO GET THAT  
6 DONE. AND PLEASE CITE THE CASES THAT WAS REFERENCED  
7 LAST TIME. THANK YOU.

8 MS. CLEOFÉ: YES, YOUR HONOR.

9 THE COURT: OKAY. FOR CASE MANAGEMENT ORDER  
10 NUMBER TWO WHICH I HAVE NOT YET SIGNED, AND I'LL TELL  
11 YOU WHY. IT FIRST ADDRESSES THE MASTER COMPLAINT AND  
12 THE SHORT FORM COMPLAINTS AND THE SCHEDULE PROPOSED FOR  
13 NUMBERS ONE THROUGH SIX AS ACCEPTABLE. SO THAT GOES  
14 THROUGH THE PROCESS OF THE MASTER COMPLAINT, THE SHORT  
15 FORM COMPLAINTS, PLAINTIFFS SELECTING THREE CASES TO BE  
16 THE BASIS OF THE DEMURRERS.

17 AND THE GOOD THING FROM MY STANDPOINT  
18 ABOUT THAT PART OF THE SCHEDULE IS THAT IT TEES THE  
19 CASES UP PRIOR TO THE TIME WHEN -- WELL, JUST PRIOR TO  
20 THE TIME WHEN WE EXPECT FOR THE GONZALEZ VERSUS GOOGLE  
21 CASE TO BE DECIDED BY THE SUPREME COURT. SO I KNOW THAT  
22 IN THE MDL YOU ARE DOING ADVANCE BRIEFING ON DEMURRERS,  
23 AND OF COURSE WE GOT STARTED WITH THIS COORDINATION  
24 SEVERAL MONTHS AFTER THE MDL WAS PUT TOGETHER SO WE'RE A  
25 LITTLE BIT BEHIND, BUT THIS WILL ALLOW US JUST TO HAVE  
26 ONE SET OF BRIEFING AFTER GONZALEZ VERSUS GOOGLE IS  
27 DECIDED OR NOT DECIDED. I HAVE A THEORY THAT DISMISSAL  
28 IS IMPROVIDENTLY GRANTED, BUT WE'LL SEE IF I AM RIGHT.

1 IT DOESN'T MATTER. WE'LL KNOW ONE WAY OR THE OTHER AT  
2 THAT POINT.

3 OKAY. SO WITH RESPECT TO THE PLEADING  
4 CHALLENGES AND THE SCHEDULE FOR THAT, THAT'S WHAT I  
5 WANTED TO TALK TO YOU BEFORE I SIGNED CMO NUMBER TWO.  
6 SO LET ME FIRST ASK YOU, HAVING HAD SOME TIME TO THINK  
7 ABOUT IT, IS IT STILL MAKING SENSE TO YOU THAT WE WILL  
8 BRIEF THE PLEADING CHALLENGES ON THE BASIS OF THREE  
9 CASES IN THE WAY THAT WE'RE PLANNING TO? IS THAT MAKING  
10 SENSE TO EVERYBODY?

11 MR. CREED: IT DOES FOR THE PLAINTIFFS, YOUR  
12 HONOR.

13 MR. SCHMIDT: YOUR HONOR, PAUL SCHMIDT FOR  
14 META. WE ARE PREPARED TO PROCEED ON THAT BASIS. IT  
15 DOES CREATE A DISCONNECT BETWEEN THE WAY YOUR HONOR IS  
16 ADDRESSING THE DEMURRER AND THE WAY JUDGE GONZALEZ  
17 ROGERS IS ADDRESSING THE MOTION TO DISMISS. AND WE HAVE  
18 BEEN ASSUMING THAT SOME OF THAT WOULD BE SMOOTHED OVER  
19 BY THE FACT THAT WHEN PLAINTIFFS ELECT THEIR CASES THEY  
20 WILL HAVE SOME FOCUS ON CALIFORNIA PLAINTIFFS AS OPPOSED  
21 TO IDIOSYNCRATIC -- OTHER STATES THAT MIGHT BE BEFORE A  
22 COURT, BUT THAT COULD BECOME A BIT OF AN ISSUE IF THAT  
23 CIRCUMSTANCE ARISES IF THEY PICK NON-CALIFORNIA  
24 PLAINTIFFS.

25 THE COURT: OKAY. I CAN'T IMAGINE THAT YOU  
26 WOULD PICK ALL NON-CALIFORNIA PLAINTIFFS.

27 MR. CREED: I BELIEVE AT THIS POINT ALL THE  
28 PLAINTIFFS IN THESE JCCP ARE CALIFORNIA PLAINTIFFS

1 ALTHOUGH THAT MIGHT CHANGE OR MAY HAVE ALREADY CHANGED,  
2 THE LAST TIME I CHECKED.

3 THE COURT: OKAY. MR. SCHMIDT IS SHAKING HIS  
4 HEAD.

5 MR. SCHMIDT: YES, THAT'S NOT OUR  
6 UNDERSTANDING, BUT YOU KNOW YOUR PLAINTIFFS BETTER THAN  
7 WE DO. WE HAD TAUGHT FROM LOOKING AT IT THAT THE  
8 MAJORITY WERE CALIFORNIA, BUT THERE WERE A RANGE FROM  
9 OTHER STATES, BUT YOU WOULD KNOW BETTER THAN US.

10 MR. CREED: YEAH, I THINK THE LAST WE DID,  
11 THERE WERE MOSTLY CALIFORNIA, AND I BELIEVE I -- IF IT  
12 HAS CHANGED SINCE THEN. I BELIEVE THE LAST WE DID THEY  
13 WERE ALL CALIFORNIA, BUT I THINK THEY HAVE CHANGED.  
14 THERE HAS BEEN SOME THAT ARE NON-CALIFORNIA. I'M AWARE  
15 THERE WILL BE MORE NON-CALIFORNIA PLAINTIFFS TO BE FILED  
16 IN THIS PROCEEDING.

17 THE COURT: OKAY. THE REASON I WANTED TO  
18 BRIEF THE ENTIRETY OF A COMPLAINT OR, AS WE'RE GOING TO  
19 DO IT, THREE COMPLAINTS IS BECAUSE OF THE STRICTURES ON  
20 DEMURRERS IN CALIFORNIA. I JUST -- MY INSTINCT WAS WE  
21 COULD GET HUNG UP IF WE DIDN'T DO AN ENTIRE COMPLAINT.  
22 AND I REALIZE THAT JUDGE GONZALEZ ROGERS, WITH WHOM I  
23 HAVE SPOKEN BY THE WAY, HAS IT SET UP DIFFERENTLY, BUT  
24 12(B)(6) IS DIFFERENT TOO, QUITE DIFFERENT, FRANKLY. SO  
25 BEING AWARE OF HOW IT'S BEING DONE IN FEDERAL COURT, I  
26 THINK I'M SATISFIED THAT THIS IS A BETTER WAY FOR STATE  
27 COURT.

28 AND THE OTHER THING ABOUT THE WAY THE MDL

1 IS DOING IT, OBVIOUSLY, THEY HAVE MORE THAN ONE STATE'S  
2 LAW TO HANDLE AND THAT WILL BE A COMPLEXITY, BUT ALSO  
3 JUDGE GONZALEZ ROGERS IS ONLY DOING FIVE CAUSES OF  
4 ACTION, AS I UNDERSTAND IT. SO I AM FINE, BY THE WAY,  
5 STRUCTURING THIS CASE SO THAT JUDGE GONZALEZ ROGERS  
6 DECIDES FIRST, AND I'M FINE WITH THAT. I DON'T KNOW  
7 THAT IT'S NECESSARY, BUT WE'LL SEE. WE'LL SEE HOW IT  
8 WORKS OUT. I'M KIND OF THINKING THAT THIS WILL BE  
9 STRUCTURED SO SHE'S LIKELY TO DECIDE BEFORE I DO, WHICH  
10 I AM DEFERENTIAL. THAT'S FINE. OKAY. AND I DON'T HAVE  
11 TO FOLLOW, AS YOU KNOW.

12 SO GOING BACK THEN TO THE SCHEDULE -- I  
13 MEAN, THE REPLY BRIEF WOULD BE FILED IN OCTOBER, AND I  
14 JUST WOULD RATHER GET ON WITH THIS A LITTLE MORE QUICKLY  
15 IF WE COULD. BUT, ON THE OTHER HAND, IT'S VERY  
16 COMPLICATED, AND THE SCHEDULE AS PROPOSED GIVES EACH  
17 SIDE ABOUT A MONTH. SO IF WE ASSUME, YOU KNOW, THAT THE  
18 SUPREME COURT BEFORE IT GOES ON VACATION DECIDES  
19 THEIR -- OR IT DOESN'T DECIDE THEIR CASE IN GONZALEZ  
20 VERSUS GOOGLE, DEFENDANTS WOULD GET ABOUT A MONTH TO  
21 ABSORB THAT AND FILE AND THEN A MONTH AND A MONTH. SO  
22 IT'S JUST A LITTLE LONG, FRANKLY, BUT YOU LET ME KNOW  
23 WHAT YOU THINK. THOUGHTS?

24 MR. CREED: WELL, IT'S FINE, YOUR HONOR.  
25 BEFORE WE GOT HERE, I SAW THE ORDER WASN'T ENTERED AND I  
26 THOUGHT -- I ACTUALLY SPECULATED IT WAS BECAUSE YOU  
27 THOUGHT IT WAS A LITTLE LONG. WE'RE FINE SHORTENING IT.  
28 I THINK THE CHALLENGE WILL BE FOR DEFENDANTS TO PREPARE

1 THEIR INITIAL DEMURRER WHICH THEY ARE THE MOVING PARTY,  
2 BUT WE'RE FINE SHORTENING OUR REPLY TO A MONTH INSTEAD  
3 OF SIX WEEKS.

4 MR. SCHMIDT: I THINK FROM OUR PERSPECTIVE,  
5 YOUR HONOR, WE WOULD PREFER HAVING A GOOD BLOCK OF TIME  
6 AFTER THEY IDENTIFY THEIR THREE CASES. I DON'T WANT TO  
7 JAM THE PLAINTIFFS UP, BUT IF THEY IDENTIFY THEIR THREE  
8 CASES EARLIER WE COULD PROBABLY MOVE UP OUR DEMURRER  
9 DATE A WEEK OR TWO EARLIER. AND THAT WOULD PULL  
10 EVERYTHING ALONG IN ADDITION TO SHORTENING WHICH  
11 MR. CREED SUGGESTED, BUT WE CAN PROCEED HOWEVER YOUR  
12 HONOR DEEMS BEST.

13 THE COURT: RIGHT. SO, YOU KNOW, MAYBE THE  
14 PLAINTIFFS COULD DO THAT LITTLE BIT EARLIER. ON THE  
15 OTHER HAND, YOU KNOW, WE MIGHT NOT HAVE GONZALEZ VERSUS  
16 GOOGLE UNTIL JULY 1 OR JULY 3, OR THEY ALWAYS GET IT  
17 DONE BY THE 4TH OF JULY.

18 MR. CREED: YOUR HONOR, I THINK THAT -- I'LL  
19 NEED TO CONFER WITH OTHER PLAINTIFFS COUNSEL, BUT I  
20 SUSPECT THAT THE GONZALEZ DECISION AND SECTION 230 IS  
21 NOT GOING TO IMPACT TOO MUCH WHICH PLAINTIFFS WE  
22 IDENTIFY. SO WE -- I CAN CONFER WITH OTHER PLAINTIFFS  
23 COUNSEL AND SEE IF WE CAN IDENTIFY WHOLE COMPLAINTS THAT  
24 THEY CAN DEMURRER ON EARLIER.

25 THE COURT: OKAY. ALL RIGHT. SO LET ME --  
26 WELL, LET'S SEE.

27 MR. CREED: WOULD YOUR HONOR LIKE US TO RE --

28 THE COURT: TO REDO IT. I WOULD LIKE YOU TO

1 REDO IT. ON THE OTHER HAND, I AM LEAVING FOR A TWO-WEEK  
2 VACATION ON FRIDAY AND I'M IN EUROPE. IF YOU DON'T GET  
3 IT TO ME BEFORE FRIDAY, I WON'T GET IT ENTERED.

4 SO LET'S DO THIS. I WILL -- I'LL ENTER  
5 THE ORDER, BUT I'LL STRIKE PARAGRAPHS 6 THROUGH 9 AND  
6 THEN YOU CAN MEET AND CONFER. AND THEN IF I DON'T GET  
7 YOUR NEW IDEAS BEFORE I LEAVE MID-DAY ON FRIDAY THIS  
8 WEEK, THEN I'LL SEE IT WHEN I GET BACK. OKAY.

9 MR. CREED: YES.

10 MR. SCHMIDT: THANK YOU, YOUR HONOR.

11 THE COURT: GOOD. AND, YOU KNOW, WE WILL THEN  
12 SET A -- WHAT YOU SHOULD DO IS SET A -- PUT A LINE THERE  
13 FOR A HEARING DAY. AND THEN I AND MY STAFF WILL TAKE A  
14 LOOK AT THAT AND WE'LL SET THE HEARING DATE. THEN IF  
15 IT'S BAD FOR SOMEBODY YOU CAN LET ME KNOW. OKAY. GOOD.

16 SO AS AN ASIDE ON THE MDL BRIEFING, I DID  
17 LOOK AT THE LODGED COMPLAINT, MASTER COMPLAINT, IN THE  
18 MDL, AND I WAS WONDERING WHETHER YOU HAD DISCUSSED WITH  
19 JUDGE GONZALEZ ROGERS INCLUDING ONE OF THE CRIMINAL  
20 STATUTE CAUSES OF ACTION IN THE FIRST WAIVE BRIEFING.  
21 I'M -- IT'S NONE OF MY BUSINESS. I'M JUST THROWING THAT  
22 OUT THERE.

23 MR. SCHMIDT: WE DID DISCUSS IT, YOUR HONOR,  
24 BUT IT WILL COME UP BECAUSE THE NEGLIGENCE PER SE CLAIM  
25 THAT THE PLAINTIFFS HAVE ELECTED TO COVER SWEEPS IN  
26 THOSE -- THOSE CAUSES OF ACTION.

27 THE COURT: OKAY. THAT SEEMS LIKE A BIG ISSUE  
28 TO ME. THAT'S ALL. OKAY. ENOUGH SAID. I'VE GOT

1 ENOUGH TO DO HANDLING MY CASE WITHOUT HANDLING JUDGE  
2 GONZALEZ ROGERS' CASES.

3 LET'S MOVE TO THE ISSUE OF THE PROTECTIVE  
4 ORDER. AND I AM QUITE WILLING TO WAIT UNTIL FEDERAL  
5 COURT FINISHES ITS WORK AND THEN LOOK AT NECESSARY  
6 MODIFICATIONS WITHOUT GETTING TOO FAR INTO THE ISSUES  
7 THAT ARE IN THE JOINT REPORT. AND THINGS WILL SMOOTH  
8 OUT OVER TIME, BY THE WAY, IN TERMS OF EACH SIDE  
9 COMMUNICATING WITH THE OTHER SUFFICIENTLY IN ADVANCE TO  
10 GET BOTH SIDE'S VIEWS IN IN A FAIR WAY. I HAVE HAD THAT  
11 HAPPEN BEFORE IN LARGE CASES WHERE THE JOINT REPORTS ARE  
12 KIND OF A PROBLEM AT THE BEGINNING, BUT I'M CONFIDENT  
13 YOU WILL SMOOTH THAT OUT AS TIME GOES ON.

14 SO I WILL SAY THAT THERE HAS TO BE  
15 COMPLIANCE WITH CALIFORNIA RULE OF COURT 2.550, ET SEC.  
16 I COULDN'T, FRANKLY, IMAGINE A SITUATION IN WHICH IT  
17 WOULD BE APPROPRIATE TO NOT ALLOW NONPARTIES TO  
18 CHALLENGE CONFIDENTIALITY. THAT'S PROBABLY 60 PERCENT  
19 OF THE REASON FOR THE WAY CALIFORNIA LAW HAS EVOLVED  
20 WITH THE CALIFORNIA SUPREME COURT CASE WHICH I DIDN'T  
21 LOOK UP, BUT ONE THE NETWORKS.

22 MR. CREED: NBC SUBSIDIARY.

23 THE COURT: NBC SUBSIDIARY, THANK YOU, BEING  
24 VERY CONCERNED ABOUT OPEN COURT PROCEEDINGS. AND THAT'S  
25 WHY -- AND THEN THE RULES OF COURT WERE DRAFTED IN THE  
26 WAKE OF THAT. GO AHEAD.

27 MS. SIMONSEN: UNDERSTOOD, YOUR HONOR, AND WE  
28 APPRECIATE THAT GUIDANCE. WE HAVE EVERY INTENTION WITH

1 RESPECT TO THE PROTECTIVE ORDER THAT WE WOULD ENTER FOR  
2 YOUR COURT'S CONSIDERATION TO ADDRESS RULE 2.550 AND  
3 TAKE INTO ACCOUNT WITH RESPECT TO SEALING.

4 WITH RESPECT TO THE CONFIDENTIALITY  
5 CHALLENGES, THE RULE THAT THE PLAINTIFFS CITE, AS WE  
6 UNDERSTAND IT, ALLOWS FOR THE GENERAL PUBLIC TO  
7 CHALLENGE THE CONFIDENTIALITY OF RECORDS FILED AND  
8 LODGED WITH THE COURT AS OPPOSED TO, FOR INSTANCE, BEING  
9 ABLE TO CHALLENGE THE CONFIDENTIALITY OF ANY DOCUMENT  
10 PRODUCED IN THE COURSE OF DISCOVERY IN A CASE. AND THAT  
11 WOULD BE THE DISTINCTION THAT AT THIS POINT WE WOULD  
12 DRAW, BUT WE ARE HAPPY TO CONTINUE THE CONFERRAL WITH  
13 THE PLAINTIFFS ON THIS. THE ISSUE IS THEN TEED UP FOR  
14 MAGISTRATE JUDGE HIXON IN THE MDL AS WELL, RECOGNIZING A  
15 DIFFERENT SET OF RULES AND PROCEDURES WILL APPLY THERE,  
16 BUT I THINK THAT WILL BE VERY INSTRUCTIVE FOR THE  
17 PARTIES BEFORE WE SUBMIT SOMETHING FOR YOUR HONOR'S  
18 CONSIDERATION.

19 THE COURT: AND THEN ON THE DISCLOSURE OF  
20 EXPERTS ISSUE, I HAVEN'T REALLY -- THAT HAS NOT COME UP  
21 BEFORE, BUT I STARTED THINKING ABOUT IT. AND, YOU KNOW,  
22 ONE THING THAT OCCURRED TO ME WAS THAT MAYBE, INSOFAR AS  
23 CONFIDENTIAL MATERIAL IS BEING PROVIDED TO AN EXPERT,  
24 PERHAPS, THE PARTY THAT, AS MAKING THAT DISCLOSURE TO  
25 THE EXPERT, COULD BE REQUIRED JUST TO FILE UNDER SEAL  
26 WITH THE COURT THE COMPLIANCE DOCUMENT THAT THE EXPERT  
27 SIGNED SO THAT IT'S JUST ON FILE. EARLY DISCLOSURE OF  
28 EXPERTS IS AN ISSUE. I MEAN, OBVIOUSLY, IN -- AT LEAST



1 IN STATE COURT PARTIES CAN HAVE NON-DISCLOSED EXPERTS  
2 THAT NEVER GET DISCLOSED AND THEY'RE -- YOU KNOW, IT'S  
3 WORK PRODUCT AT THAT POINT. ANYWAY, JUST A THOUGHT.

4 SO I WILL AWAIT THE WORK ON THE FEDERAL  
5 COURT PROTECTIVE ORDER. AND ALSO WITH THE ESI PROTOCOL,  
6 I'M GLAD FOR YOU TO WORK WITH THE MDL COUNSEL TO FIGURE  
7 THAT ONE OUT.

8 MR. CREED: YOUR HONOR, MAY I MAKE A COMMENT  
9 ON THE DISCLOSER OF EXPERT ISSUE. ONE OF THE -- AND I  
10 AM NOT SURE THERE IS ANYTHING TO DECIDE AT THE MOMENT ON  
11 IT, OF COURSE, BUT ONE OF THE CHALLENGES WE'LL HAVE ON  
12 THE PLAINTIFFS SIDE IS THAT THERE ARE SOME ATTORNEYS WHO  
13 ARE IN THE STATE COURT PROCEEDING AND THE FEDERAL  
14 PROCEEDING AND SO.

15 WHAT WE'RE TRYING TO NAVIGATE HERE AND  
16 WHY WE THOUGHT IT WAS USEFUL TO PRESENT THE ISSUE TO YOU  
17 WAS SITUATIONS WHERE THERE IS, OBVIOUSLY, DIFFERENT  
18 RULES, DIFFERENT PROCEDURAL RULES, IN EACH JURISDICTION,  
19 AND WE'RE GOING TO HAVE TO FIGURE OUT WAYS TO MAKE SURE  
20 ATTORNEYS ARE IN COMPLIANCE WITH BOTH PROTECTIVE ORDERS.  
21 SO WE'LL WORK WITH DEFENDANTS ON IT, BUT WE ARE WORKING  
22 WELL COORDINATING THE TWO CASES. WE'VE ALL BEEN ON  
23 PHONE CALLS TOGETHER, LENGTHY MEET AND CONFERS ON A  
24 NUMBER OF ISSUES. AND SO IT WILL BE A PROCESS TO SMOOTH  
25 OUT FOR HOW THE DIFFERENT PROCEEDINGS PRESENT ISSUES TO  
26 THE DIFFERENT DECISION MAKERS UNDER DIFFERENT RULES, AND  
27 SO WE'RE JUST MAKING SURE WE'RE ACTING APPROPRIATELY  
28 HERE.

1 THE COURT: OKAY.

2 MS. SIMONSEN: JUST TO BRIEFLY RESPOND. WE OF  
3 COURSE UNDERSTAND THAT THE PARTIES WILL NEED TO CONFER  
4 ABOUT ANY STATE COURT DIFFERENCES THAT MAY REQUIRE SOME  
5 ADJUSTMENTS TO WHATEVER THE PARTIES PROPOSE OR IS  
6 ENTERED IN THE MDL. WE OBVIOUSLY WANT TO BE MINDFUL OF  
7 ANY PARTICULAR GUIDANCE YOUR HONOR HAS. IT'S SIMPLY OUR  
8 POSITION THAT IT'S PREMATURE TO BE RAISING THOSE ISSUES  
9 AT THIS POINT IN TIME. AND WE WOULD PROPOSE THAT WHEN  
10 THE ISSUE IS RIPE FOR CONSIDERATION WE PRESENT ALL  
11 REMAINING OUTSTANDING ISSUES FOR YOUR HONOR'S  
12 CONSIDERATION SO THAT WE DON'T PREMATURELY RAISE THEM  
13 WITH YOU AT CMC'S.

14 THE COURT: OKAY. THAT'S FINE. I LIKE SEEING  
15 THINGS IN ADVANCE, ACTUALLY, THINKING ABOUT THEM, BUT  
16 YOU KNOW HOW WE WORK IN COMPLEX COURTS. WE DO A LOT OF  
17 INFORMAL -- FOR EXAMPLE, INFORMAL DISCOVERY CONFERENCES  
18 AND PREMOTION CONFERENCES. SO WE DO A LOT OF  
19 COMMUNICATING WITHOUT DECIDING, AND DECIDING IS A  
20 DIFFERENT THING.

21 MS. SIMONSEN: THANK YOU, YOUR HONORER.

22 THE COURT: OKAY. ON THE PRESERVATION ISSUE,  
23 I THINK IF -- I'M GLAD YOU ARE GOING TO PROCEED WITH THE  
24 PLAINTIFF PROFILE FORM THAT WOULD SORT OF INITIATE, AS I  
25 WOULD SEE IT, A RESPONSIBILITY OF THE DEFENDANT TO  
26 PRESERVE WITH REGARD TO THE USER ACCOUNTS. I THINK IT'S  
27 IMPORTANT TO DO THAT A VERY QUICKLY, QUITE HONESTLY. I  
28 THINK IT'S TO EVERYBODY'S ADVANTAGE.

1 IT'S TO PLAINTIFF ADVANTAGE BECAUSE YOU  
2 WANT THAT EVIDENCE PRESERVED. IT'S TO THE DEFENDANT'S  
3 ADVANTAGE BECAUSE -- WELL, THE PRESERVATION ORDERS, I  
4 DON'T THINK I'VE DONE A DOCUMENT PRESERVATION ORDER,  
5 WHICH IT'S SORT OF INTERESTING, BUT IT REALLY IS A  
6 PROTECTION FOR THE DEFENDANTS BECAUSE WHAT HAPPENS  
7 WITHOUT THAT IS -- IT COULD BE WHAT HAPPENED IN ONE OF  
8 THE FIRST CASES I LITIGATED. OUR -- I WAS WORKING WITH  
9 A PARTNER WHO WAS LITIGATING IT. YOU KNOW HOW THAT  
10 GOES.

11 AND, YOU KNOW, THE RETIRED -- I WILL TELL  
12 THIS SORRY. WE WERE SUBBED INTO A CASE, AND JUST BEFORE  
13 WE WERE SUBBED IN A FORMER EMPLOYEE, HIGH-LEVEL  
14 EMPLOYEE, OF THE COMPANY HAD BEEN DEPOSED. HE WAS  
15 RETIRED. AND IT WAS A DEPOSITION WITH A NOTICE TO  
16 PRODUCE DOCUMENTS, A SUBPOENA IN THE CASE. AND HE -- IT  
17 WAS VERY ODD THAT HIS WIFE INSISTED HE CLEAN OUT THE  
18 GARAGE ON THE SATURDAY BEFORE HIS WEDNESDAY DEPOSITION,  
19 AND HE DESTROYED EVERYTHING.

20 OKAY. AND WE WERE NOT IN THE CASE AT  
21 THAT TIME, THANKFULLY, BUT WE WERE BROUGHT IN AFTER  
22 THAT. IT WAS A HUGE FACTOR IN THE CASE, JUST A HUGE  
23 FACTOR BECAUSE THE DESTRUCTION WAS GOING TO LOOM SO  
24 LARGE IN THAT TRIAL. AND I JUST REFERRED THE DEFENDANTS  
25 TO CACI 204, WILLFUL SUPPRESSION. I HAVE GIVEN THAT  
26 INSTRUCTION BEFORE. I THINK IT HAS A DEVASTATING AFFECT  
27 ON THE JURY, AND MANY TIMES PLAINTIFFS ARE BETTER OFF  
28 HAVING THAT INSTRUCTION THAN HAVING THE EVIDENCE.

1 SO THIS WHOLE DOCUMENT PRESERVATION  
2 ISSUE, YOU CAN GO AHEAD AND NEGOTIATE A PRESERVATION  
3 ORDER IN FEDERAL COURT. TO MY WAY OF THINKING, IT'S  
4 ALMOST A SAFE HARBOR FOR THE DEFENDANTS, BUT I THINK  
5 EVERYTHING IS ADVANTAGED BY DOING THIS PLAINTIFF  
6 PROFILE, AND I THINK YOU SHOULD GET ON WITH IT. AND  
7 EVEN IF YOU CAN'T -- WELL, HOPEFULLY, YOU CAN NEGOTIATE  
8 SOMETHING THAT'S AGREED BY BOTH SIDES, BUT JUST BASED ON  
9 WHAT HAS BEEN ALLEGED AND DISCUSSED ABOUT HOW LONG  
10 THINGS ARE KEPT IN THE INTERNET WORLD OF THESE ACCOUNTS,  
11 I THINK THAT NEEDS TO BE DONE QUICKLY.

12 MR. CREED: YOUR HONOR, SO WE ARE WORKING,  
13 NEGOTIATING A PLAINTIFF PROFILE FORM FOR PRESERVATION  
14 PURPOSES. I THINK IN THE INTERIM, I CAN SPEAK FOR OUR  
15 CASES, WE HAVE BEEN RESPONDING AT LEAST TO META'S  
16 REQUESTS FOR PROFILE INFORMATION FOR THE PLAINTIFFS. SO  
17 IT'S BEEN HAPPENING INFORMALLY. I HAVE SEEN LETTERS  
18 GOING BACK AND FORTH ON THAT, BUT WE WILL ADOPT A MORE  
19 FORMAL PROCESS, AS YOUR HONOR DIRECTED.

20 ON THE ISSUE OF THE PRESERVATION ORDER IN  
21 FEDERAL COURT, MY UNDERSTANDING IS THAT DEFENDANTS WILL  
22 SEEK A SIMILAR ORDER IN THIS PROCEEDING. AND WHAT WE'RE  
23 TRYING TO AVOID, OF COURSE, IS THAT THE FEDERAL ENACTS  
24 AN ORDER UNDER FEDERAL RULES WITH RESPECT TO  
25 DISCOVERABILITY STANDARDS, AND THEN WE COME TO YOUR  
26 HONOR WITH AN ARGUMENT THAT THOSE STANDARDS DON'T APPLY  
27 AND THERE IS A DIFFERENT ORDER IN THIS CASE.

28 WE ARE TRYING TO SYNC THEM UP. AND AS

1 YOU SAID, AS YOUR HONOR SAID, I THINK IT DOES PROTECT  
2 THE DEFENDANT, SO MAYBE IT'S JUST SOMETHING FOR THE  
3 DEFENDANTS TO FIGURE OUT HOW TO COMPLY WITH BOTH ORDERS  
4 IF THERE ARE TWO ORDERS.

5 THE COURT: I MEAN, I DON'T KNOW. I LOOK AT  
6 IT AS A SAFER HARBOR FOR THE DEFENDANTS SO -- I DON'T  
7 KNOW. AND IT'S A CURIOUS QUESTION, IN A WAY, HOW THE --  
8 HOW THE BALANCING OF THE FEDERAL RULES WITH REGARD TO  
9 DISCOVERY IN TERMS OF WHAT IS DISCOVERABLE WOULD APPLY  
10 IN A CASE LIKE THIS. I MEAN, IT'S NOT A SITUATION WHERE  
11 IT'S A SMALL CASE AND A SMALL DEFENDANT PRODUCING  
12 DOCUMENTS. SO IN THE END I DOUBT THERE IS MUCH  
13 DIFFERENCE, BUT, YOU KNOW, I CAN'T SPECULATE.  
14 ULTIMATELY THE ISSUE IS WHETHER IT'S REQUESTED IN  
15 DISCOVERY AND WHETHER THE COURT FINDS THAT IT SHOULD BE  
16 PRODUCED. AND THEN IF IT'S BEEN DESTROYED, THEN THAT'S  
17 THE PROBLEM.

18 MS. SIMONSEN: YOUR HONOR, WE COULDN'T AGREE  
19 WITH YOU MORE AS TO THE PRESERVATION ORDER BEING, I  
20 THINK, A HELPFUL TOOL FOR BOTH SIDES. AND THE  
21 PRESERVATION ORDER THAT WE HAVE PROPOSED TO  
22 PLAINTIFFS -- WHICH, AGAIN, WE'RE NEGOTIATING WITH BOTH  
23 THE MDL PLAINTIFFS AND THE JCCP PLAINTIFFS -- IS  
24 DESIGNED TO MEET DEFENDANTS' PRESERVATION AND DISCOVERY  
25 OBLIGATIONS ACROSS BOTH THE STATE AND FEDERAL  
26 PROCEEDINGS.

27 CERTAINLY, THERE IS SOME DIFFERENCE IN  
28 TERMINOLOGY WITH WORDS LIKE "PROPORTIONALITY" IN FEDERAL

1 COURT AS OPPOSED TO, PERHAPS, "BALANCE" AND "RELEVANCE"  
2 AND "UNDUE BURDEN" IN STATE COURT, BUT THE WAY THAT WE  
3 HAVE APPROACHING THE PRESERVATION ORDER IS TO DELINEATE  
4 SPECIFIC CATEGORIES OF DOCUMENTS AND INFORMATION THAT  
5 EACH DEFENDANT HAS, BEING VERY TRANSPARENT WITH  
6 PLAINTIFFS AS TO EXACTLY WHAT WE ARE PRESERVING AND THE  
7 CATEGORIES OF INFORMATION FOR WHICH, WHETHER DUE TO  
8 PRIVACY OR BURDEN OR OTHER CONCERNS, WE TAKE A POSITION  
9 WE ARE UNABLE TO PRESERVE. AND THOSE ISSUES, WE INTEND  
10 TO BE AND HAVE BEEN FULLY TRANSPARENT WITH PLAINTIFFS  
11 ABOUT AND WILL CONTINUE TO BE TRANSPARENT WITH THEM  
12 ABOUT.

13 WITH THE SPECIFIC CATEGORIES OF DOCUMENTS  
14 AND INFORMATION DELINEATED IN THIS FASHION, IF WE CAN  
15 REACH AGREEMENT WITH PLAINTIFFS OR IF YOUR HONOR AND THE  
16 MDL COURT ARE OPEN TO THAT APPROACH, WE THINK THAT THAT  
17 REALLY OBVIATES ANY NEED FOR A DISCUSSION AROUND THE  
18 KIND OF THEORETICAL DIFFERENCES BETWEEN FEDERAL AND  
19 STATE LAW AND DISCOVERABILITY WHICH AS YOUR HONOR NOTED  
20 FROM OUR PERSPECTIVE REALLY IS EQUIVALENT ACROSS THE  
21 JURISDICTIONS. AND WE HAVE BEEN APPROACHING  
22 PRESERVATION WITH OUR OBLIGATIONS UNDER STATE AND  
23 FEDERAL RULES IN MIND.

24 THE COURT: OKAY. WELL, I DON'T THINK THERE  
25 IS ANYTHING MORE I CAN DO FOR YOU HERE EXCEPT THAT --  
26 AND REALLY I THINK IT'S MOSTLY ON THE PLAINTIFF'S SIDE  
27 TO GET TOGETHER SOMETHING THAT WE'VE TALKED ABOUT AS A  
28 PLAINTIFF PROFILE FORM TO MAKE A DEMAND, IF YOU WILL, ON

1 THE DEFENDANT'S, YOU KNOW, HERE'S AT A MINIMUM WHAT WE  
2 BELIEVE THE ACCOUNT INFORMATION IS, ET CETERA, AND THE  
3 IDENTIFICATION OF THE PLAINTIFF. SO OKAY.

4 MS. SIMONSEN: YOUR HONOR, JUST TO PROVIDE A  
5 BRIEF UPDATE TO YOUR HONOR, THE DEFENDANTS DID PROCEED A  
6 PLAINTIFF PROFILE FORM WHICH WE ARE NOW REFERRING TO AS  
7 A PLAINTIFF PRESERVATION INFORMATION FORM JUST TO MAKE  
8 SURE THERE'S NO CONFUSION WITH RESPECT TO THE PLAINTIFF  
9 FACT SHEET WHICH WILL BE A SEPARATE DOCUMENT. AND WE  
10 DID RECEIVE COMMENTS, AT LEAST FROM THE MDL PLAINTIFFS,  
11 I BELIEVE, MONDAY EVENING. AND WE WILL BE MEETING AND  
12 CONFERRING WITH BOTH SETS OF PLAINTIFFS ON THAT FORM  
13 TOMORROW MORNING, SO WE ARE MOVING IT FORWARD.

14 THE COURT: GOOD. I APPRECIATE THAT.

15 MR. CREED: YES, YOUR HONOR.

16 THE COURT: OKAY. VERY GOOD.

17 SO WE TALKED SEPARATELY LAST TIME ABOUT  
18 CSAM PRESERVATION, AND I SEE THAT YOU HAVE BEEN  
19 DISCUSSING THAT. I WOULD LIKE TO GIVE PRIORITY TO THE  
20 ISSUE. COULD WE HAVE A STIP AND PROPOSED ORDER IN 20  
21 DAYS ON THAT AS A SEPARATE ISSUE.

22 MS. SIMONSEN: YOUR HONOR, WE HAD ASKED  
23 PLAINTIFFS ON MARCH 7TH FOR A MEET AND CONFER ON THAT  
24 ISSUE AND THEY DECLINED TO SET IT. WE HAVE NOW FINALLY  
25 SET A MEET AND CONFER ON THAT ISSUE FOR TOMORROW  
26 MORNING. I BELIEVE THAT THIS IS A RELATIVELY COMPLEX  
27 ISSUE.

28 JUST TO GIVE YOUR HONOR ONE PERSPECTIVE

1 ON IT, FEDERAL LAW DOES ALLOW, FOR INSTANCE, IN CRIMINAL  
2 CASES FOR CRIMINAL DEFENDANTS ONLY TO ACCESS THIS TYPE  
3 OF CSAM INFORMATION THROUGH GOVERNMENT FACILITIES. AND  
4 THAT IS AN EXCEPTION MADE ONLY IN THE CASE OF CRIMINAL  
5 CASES. THAT'S ONLY TO HIGHLIGHT FOR YOUR HONOR REALLY  
6 WHAT A SORT OF EXTREME FEDERAL STATUTE WE ARE DEALING  
7 WITH HERE THAT PROHIBITS US UNDER FEDERAL LAW FROM  
8 POSSESSING AND DISTRIBUTING CHILD SEX ABUSE MATERIAL.

9 AND FOR THOSE REASONS WE THINK LIKELY  
10 SIGNIFICANT CONFERRAL ON THESE ISSUES WILL BE REQUIRED  
11 FROM OUR PERSPECTIVE, AND IT'S IN PLAINTIFFS INTEREST  
12 VERY MUCH TO UNDERSTAND HOW THAT FEDERAL STATUTE MAY  
13 APPLY WITH RESPECT TO ANY CSAM THAT THEIR CLIENTS MAY BE  
14 IN POSSESSION OF BY VIRTUE OF MAINTAINING THEIR SOCIAL  
15 MEDIA ACCOUNTS. SO WE THINK BOTH SIDES HAVE AN INTEREST  
16 IN HAVING CLARITY AND AN OPPORTUNITY TO FULLY VET THESE  
17 ISSUES WITH ONE ANOTHER BEFORE PRESENTING THEM TO YOUR  
18 HONOR.

19 I THINK WE CAN CERTAINLY MAKE EVERY  
20 EFFORT TO -- IF WE CAN REACH AGREEMENT ON A PROPOSAL  
21 WITH RESPECT TO CSAM PRESERVATION, I THINK 20 DAYS  
22 LIKELY WOULD BE SUFFICIENT, SUBJECT TO THE VIEWS OF THE  
23 OTHER DEFENDANTS AND THE PLAINTIFFS. I THINK THAT IF WE  
24 AREN'T ABLE TO REACH AGREEMENT ON THAT ISSUE, A BIT OF A  
25 LONGER PERIOD OF TIME SO THAT WE CAN FULLY BRIEF IT FOR  
26 YOUR HONOR WOULD BE BENEFICIAL.

27 MR. CREED: YOUR HONOR, 20 DAYS WOULD WORK FOR  
28 US. I AM NOT AWARE OF THAT MARCH 7TH COMMUNICATION, BUT



1 I AM AWARE THAT WE ARE MEETING AND CONFERRING TOMORROW  
2 ON THE ISSUE. I THINK, AS I UNDERSTAND THE ISSUE, IT'S  
3 JUST ABOUT PRESERVATION OF THE INFORMATION. SO IT'S NOT  
4 ABOUT THE PRODUCTION OR DISTRIBUTION OF THE INFORMATION.  
5 I THINK CSAM WOULD REQUIRE DEFENDANTS TO PRESERVE IT  
6 ANYWAYS REGARDLESS OF HOW -- THE METHOD BY WHICH THEY  
7 DISTRIBUTE IT TO A CRIMINAL DEFENDANT, BUT THAT'S -- WE  
8 DON'T HAVE TO ARGUE THE MERITS. TOMORROW WE CAN HAVE  
9 THE MEET AND CONFER AND WE WILL GET ON WITH IT WITHIN  
10 THE 20 DAYS.

11 THE COURT: SO IT IS INDEED ABOUT  
12 PRESERVATION, AND SO I THINK WHAT I WOULD LIKE TO DO IS  
13 TO SAY THAT I WANT A STIPULATION AND PROPOSED ORDER IN  
14 20 DAYS OR A REDLINED PROPOSED ORDER THAT HIGHLIGHTS THE  
15 AREAS OF DISAGREEMENT WITH A PROPOSAL AS TO HOW YOU  
16 WOULD LIKE TO PROCEED FURTHER WITH DISCUSSION OF THE  
17 REMAINING ISSUES WITH THE COURT.

18 SO, IN OTHER WORDS, YOU COULD SAY, YOU  
19 KNOW, HERE ARE THE AREAS OF DISAGREEMENT, THE COURT CAN  
20 JUST DECIDE, OR, YOU KNOW, HERE IS A COUPLE PARAGRAPHS  
21 FOR EACH SIDE WHICH WE'RE PUTTING ON THE MESSAGE BOARD  
22 OR, GEE, WE'D LIKE X PAGES PER SIDE AND A HEARING.  
23 RIGHT?

24 MS. SIMONSEN: VERY GOOD, YOUR HONOR.

25 THE COURT: ANY OF THAT IS FINE. SO WITHIN 20  
26 DAYS A STIPULATION AND PROPOSED ORDER REGARDING CSAM  
27 PRESERVATION OR A REDLINED PROPOSED ORDER SHOWING THE  
28 AREAS OF DISAGREEMENT TOGETHER WITH A JOINT POSTING ON

1 THE MESSAGE BOARD THAT SUGGESTS HOW YOU BELIEVE THE  
2 COURT SHOULD DECIDE THOSE ISSUES.

3 MS. SIMONSEN: YES, YOUR HONOR.

4 THE COURT: MAKE SENSE?

5 MS. SIMONSEN: YES, YOUR HONOR. THANK YOU.

6 THE COURT: VERY GOOD. I'M GLAD YOU ARE  
7 MOVING FORWARD WITH THE PLAINTIFF FACT SHEETS  
8 DISCUSSION. I THINK IT IS APPROPRIATE TO PROCEED WITH  
9 THAT. THE GAL PROCEDURE THAT YOU SUGGEST IS ACCEPTABLE.

10 MR. CREED: WE ALSO HAVE A PROPOSED ORDER ON  
11 THAT THAT I WILL BE SUBMITTING.

12 THE COURT: THAT'S FINE. SO I SEE YOU HAVE A  
13 MEDIATOR. AND SO I WILL WANT TO KNOW MAYBE BY THE TIME  
14 OF THE NEXT STATUS CONFERENCE IF YOU ARE AGREEABLE THAT  
15 I CAN SPEAK WITH THE MEDIATOR OR NOT. AND YOU CAN GO  
16 EITHER WAY ON THAT. I DON'T LIKE TO PUSH THOSE THINGS,  
17 BUT -- SO I WOULD JUST LIKE TO KNOW. ALL RIGHT. SO YOU  
18 CAN INCLUDE THAT IN YOUR POSITIONS ON THAT IN THE NEXT  
19 STATUS REPORT.

20 WHAT ELSE DO WE NEED TO TALK ABOUT?

21 MR. SCHMIDT: YOUR HONOR, I HATE TO GO BACK, I  
22 APOLOGIZE. JUST ONE SMALL POINT ON THE SCHEDULING ISSUE  
23 THAT I MISSED WHEN YOUR HONOR SAID THIS. YOUR HONOR  
24 SAID THAT THE COURT WOULD ENTER ITEMS ONE THROUGH SIX ON  
25 A SCHEDULE. ITEM SIX IS THE PLAINTIFFS' ELECTION OF THE  
26 THREE CASES THAT WOULD BE COVERED. FROM OUR PERSPECTIVE  
27 IF WE'RE GOING TO CONFER ON MOVING DATES, WE WOULD WANT  
28 TO BE ABLE TO CONFER ON MOVING THAT UP AS WELL SO I

1 WOULD ASK THE COURT IF THE COURT WOULD JUST ENTER AS ONE  
2 THROUGH FIVE.

3 THE COURT: YES, YOU ARE QUITE CORRECT.  
4 ACTUALLY, WHEN I DID AN ANNOTATION ON THE PRINTED-OUT  
5 VERSUS I STRUCK PARAGRAPH SIX AS WELL, SO WE'RE ON THE  
6 SAME PAGE.

7 MR. SCHMIDT: THANK YOU, YOUR HONORER.

8 MR. CREED: YOUR HONOR, GOING BACK AS WELL ON  
9 THE CASE MANAGEMENT ORDER NUMBER ONE INVOLVING  
10 PLAINTIFFS' LEADERSHIP, I HAD NOTICED THAT YOUR HONOR  
11 STRUCK CERTAIN PARAGRAPHS. I JUST WANTED TO SEE IF THAT  
12 WAS WITHOUT PREJUDICE BECAUSE THEY RELATED TO COMMON  
13 BENEFIT AND ASSESSMENT --

14 THE COURT: WE DON'T HAVE ANYTHING NEW.

15 MR. CREED: OKAY. UNDERSTOOD. IT'S WITHOUT  
16 PREJUDICE, YOUR HONOR?

17 THE COURT: YES, IT'S WITHOUT PREJUDICE, BUT I  
18 THINK -- LET ME EXPRESS MYSELF MORE CLEARLY ON COMMON  
19 BENEFIT FUND. I HAVE SIGNIFICANT DOUBTS AS TO WHETHER I  
20 HAVE THE AUTHORITY TO -- AND I KNOW IN OTHER CASES  
21 OTHER -- WELL, IN THE SOCIAL GAS CASE THERE WAS A COMMON  
22 BENEFIT FUND SET UP IN AN INITIAL ORDER THAT ANOTHER  
23 JUDGE ENTERED.

24 MY CONCERN IS I DON'T THINK IT'S A COMMON  
25 BENEFIT FUND IN THE WAY THAT A CLASS SETTLEMENT IS A  
26 COMMON BENEFIT FUND. I DON'T KNOW THAT I HAVE -- AS I  
27 SAY, I DON'T KNOW THAT I HAVE AUTHORITY TO ENTER IT.  
28 I'M VERY CONCERNED ABOUT WHAT THE FEDERAL COURTS DO. I

1 HAVE READ JUDGE CHHABRIA'S OPINIONS ON THIS. I'M VERY  
2 CONCERNED ABOUT WHAT FEDERAL COURTS DO BECAUSE IT  
3 STRIKES ME AS THE COURT ENSURING THAT ONE SIDE IS  
4 GETTING PAID. AND IT, TO ME, CREATES A SITUATION,  
5 PARTICULARLY WHERE BILLS ARE BEING REVIEWED AND  
6 POTENTIALLY REVIEWED BY THE COURT, THAT I'M EXTREMELY  
7 UNCOMFORTABLE WITH.

8 NOW, IN THE SOCAL GAS CASE WHICH  
9 PLAINTIFFS COUNSEL IS FAMILIAR WITH, MR. CREED IS  
10 FAMILIAR WITH, WHERE THERE IS A COMMON BENEFIT FUND,  
11 THANKFULLY THAT NEVER CAME TO THE COURT, RIGHT. BUT IN  
12 THINKING ABOUT THE PROBLEMS, UNDOUBTEDLY THE PROBLEMS  
13 THAT PLAINTIFFS HAVE IN -- PLAINTIFFS COUNSEL HAVE IN  
14 COLLECTIVE LITIGATION LIKE THIS, TO ME THERE SHOULD BE  
15 AN AGREEMENT BETWEEN COUNSEL WHICH IS THEN ENFORCED  
16 THROUGH AN AGREED ARBITRATOR.

17 MR. CREED: THANK YOU, YOUR HONOR.

18 THE COURT: SO IT DOESN'T COME BEFORE THE  
19 COURT.

20 MR. CREED: I'M GLAD I RAISED THAT THEN. WE  
21 CAN TALK INTERNALLY.

22 THE COURT: YES, MAYBE YOU CAN TALK INTERNALLY  
23 ABOUT THAT AND KNOW I AM A LITTLE BIT OUT OF THE  
24 MAINSTREAM ON THAT, AT LEAST AS YOU LOOK AT AN MDL. YOU  
25 KNOW, WE'VE BEEN DOING COMPLEX LITIGATION HERE FOR 20  
26 YEARS, AND I DON'T KNOW OF ANYBODY, ANY OF OUR JUDGES,  
27 WHO HAVE EVER GOTTEN INTO -- I KNOW THERE HAVE BEEN CASE  
28 MANAGEMENT ORDERS WHERE A COURT HAS AGREED TO A COMMON

1 BENEFIT FUND, BUT I DON'T KNOW OF A SITUATION WHERE A  
2 JUDGE HAS EVER GOTTEN INTO THE DEPTH TO BE REVIEWING  
3 BILLS AND BILLING. AND SOMEHOW WE GET THROUGH, YOU  
4 KNOW, NONETHELESS.

5 MR. CREED: YES.

6 THE COURT: BUT, YOU KNOW, I HAVE LOOKED AT  
7 WHAT YOU SET UP IN THE MDL AND IT'S VERY ELABORATE. NOT  
8 YOU, BUT THE MDL COUNSEL HAVE SET UP, AND IT'S VERY  
9 ELABORATE. BUT, YOU KNOW, IF I WERE PLAINTIFF'S  
10 COUNSEL, I WOULDN'T LIKE MY BILLS BEING LOOKED AT. AND  
11 IF I WERE DEFENSE COUNSEL, I WOULDN'T LIKE THE OTHER  
12 SIDE'S BEING ASSURED OF GETTING PAID. SO I THINK YOU  
13 CAN TAKE CARE OF IT, ACTUALLY, AS PRIVATE -- I WOULD  
14 CALL IT PRIVATE ORDERING.

15 MR. CREED: OKAY. WE'LL WORK ON THAT, YOUR  
16 HONOR.

17 THE COURT: SO THINK ABOUT THAT.

18 NOW, YOU MIGHT CONVINCE ME BECAUSE I AM  
19 NOT UNAWARE THAT THERE IS A POTENTIAL FREE RIDER EFFECT  
20 THAT YOU HAVE GOT TO DEAL WITH. RIGHT, IF THERE IS JUST  
21 ONE COUNSEL THAT SAYS -- FOLDS THEIR ARMS AND SAYS, NO,  
22 I AM NOT GOING TO CHIP IN TO PAY FOR A COMMON -- YOU  
23 KNOW, THE COURT REPORTER FEES FOR DEPOSITIONS THAT ARE  
24 HELPING MY CLIENT, NO, I AM NOT GOING TO DO THAT, AND  
25 YOU HAVE A FREE RIDER EFFECT. THAT'S A PROBLEM. I GET  
26 THAT. BUT TO THE EXTENT POSSIBLE IF YOU CAN DO PRIVATE  
27 ORDERING, THAT WOULD BE PREFERRABLE.

28 MR. CREED: WE'RE I THINK -- I TRUST WE'LL BE

1 ABLE TO DO THAT. WE DID THAT IN THE USC CASE ALSO.  
2 YES.

3 THE COURT: OKAY. ALL RIGHT. I THINK THE  
4 FEDERAL COURTS ARE GOING TO STAY WHERE THEY ARE ON THAT  
5 ISSUE, BUT WE'LL SEE.

6 OKAY. ANYTHING ELSE?

7 MR. VAN ZANDT: YOUR HONOR, JOSEPH VAN ZANDT  
8 FOR THE PLAINTIFFS. I HAD A COUPLE OF ISSUES I WANTED  
9 TO RAISE. FIRST IS SOMEWHAT RELATED TO CMO ONE, BUT  
10 EMILY JEFFCOTT IS ONE OF THE ATTORNEYS YOU APPOINTED AS  
11 LEAD COUNSEL IN THE JCCP, AND SHE WANTED ME TO PASS  
12 ALONG HER APOLOGIES FOR NOT BEING AT THE INITIAL HEARING  
13 OR AT THIS HEARING. AT THE LAST HEARING SHE WAS ON BED  
14 REST ABOUT TO GIVE BIRTH. SHE HAS SINCE GIVEN BIRTH AND  
15 IS OUT ON MATERNITY LEAVE RIGHT NOW. HER AND THE BABY  
16 ARE BOTH DOING WELL, AND SHE'S VERY MUCH LOOKING FORWARD  
17 TO GETTING BACK TO WORK AND BEING HERE IN YOUR COURT IN  
18 THE NEAR FUTURE.

19 THE COURT: WELL, CONGRATULATIONS TO HER.

20 MR. VAN ZANDT: ABSOLUTELY. THERE IS TWO  
21 ISSUES THAT YOUR HONOR MENTIONED AT THE FIRST STATUS  
22 CONFERENCE, AND ONE OF THOSE IS THE QUESTION ABOUT THE  
23 NUMBER OF CASES THAT WE ANTICIPATE BEING FILED IN THIS  
24 COURT. WE ARE IN THE PROCESS OF PERFORMING AN INTERNAL  
25 CENSUS AMONG THE ATTORNEYS WORKING ON THE JCCP TO BE  
26 ABLE TO PROVIDE YOUR HONOR, YOU KNOW, AN IDEA OF HOW  
27 MANY CASES MAY BE FILED IN THIS COURT, BUT, AT LEAST,  
28 THE BEST THE PLAINTIFFS' COUNSEL CAN KNOW FOR NOW.

1 I CAN SPEAK ON BEHALF OF MY FIRM AND ALSO  
2 ON BEHALF OF THE EMILY JEFFCOTT WHO IS AT MORGAN &  
3 MORGAN. BETWEEN OUR TWO FIRMS WE WOULD ANTICIPATE, YOU  
4 KNOW, CASES IN THE -- WELL OVER A HUNDRED CASES, IN THE  
5 HUNDREDS, POTENTIALLY, OF INDIVIDUAL CASES TO BE FILED  
6 HERE IN YOUR COURT. WE DO LOOK FORWARD TO GETTING YOUR  
7 HONOR THOSE MORE SPECIFIC NUMBERS AT THE NEXT STATUS  
8 CONFERENCE.

9 AND THEN THE NEXT ISSUE IS YOUR HONOR  
10 MENTIONED LAST TIME INTEREST OF HAVING A SCIENCE DAY.

11 THE COURT: YES.

12 MR. VAN ZANDT: WE JUST WANTED TO ASK A LITTLE  
13 CLARIFICATION. WE CERTAINLY LOOK FORWARD TO MEETING AND  
14 CONFERRING WITH DEFENDANTS ON THAT, BUT IN TERMS OF WHAT  
15 YOU HAD IN MIND IN TERMS OF THE TIMELINE AS IT WOULD  
16 WORK WITH THE REMAINDER OF THE SCHEDULE, WHEN YOU WOULD  
17 LIKE TO SEE SOMETHING LIKE THAT?

18 THE COURT: RIGHT. AND I APPRECIATE YOUR  
19 BRINGING THAT UP BECAUSE I DID TALK ABOUT IT LAST TIME,  
20 AND I ALSO TALKED WITH JUDGE GONZALEZ ROGERS ABOUT IT.  
21 I DON'T KNOW IF SHE FEELS LIKE SHE NEEDS ONE. I THINK I  
22 WOULD BE BENEFITED BY HAVING ONE PRIOR TO THE HEARING ON  
23 THE DEMURRERS, FRANKLY, BUT WHAT THAT WOULD LOOK LIKE IN  
24 MY JUDGMENT IS NOT REALLY GETTING INTO ALGORITHMS,  
25 ALTHOUGH THAT MIGHT BE MENTIONED, BUT REALLY SOMETHING  
26 LIKE SCREEN SHOTS AS TO WHAT THINGS LOOK LIKE; WHAT AN  
27 ACCOUNT LOOKS LIKE; HOW "RECOMMENDED" OR, YOU KNOW, "UP  
28 NEXT" VIDEOS ARE PRESENTED; HOW, YOU KNOW, "LIKES" AND

1 "DISLIKES," OR NUMBER OF DAYS THAT YOU HAVE BEEN IN  
2 TOUCH WITH SOMEBODY OR THOSE KINDS OF THINGS ACTUALLY  
3 LOOK AND WHAT THE VARIOUS OPTIONS ARE. SO I'M THINKING  
4 OF MAINLY SCREEN SHOTS TYPE OF THING.

5 I NOTICED IN THE SUPREME COURT HEARING --  
6 AND I MAY HAVE SAID THIS LAST TIME -- BUT IN THE SUPREME  
7 COURT HEARING ON GONZALEZ VERSUS GOOGLE, YOU KNOW, THAT  
8 WAS A VERY SIMPLE SCENARIO, I THINK, WITH YOU TUBE  
9 VIDEOS AND SOMETHING BEING PROPOSED AS, YOU KNOW, "NEXT  
10 UP." AND THE JUSTICES DIDN'T SEEM TO HAVE A VIEW IN  
11 THEIR MINDS OF WHAT THAT LOOKED LIKE. AND THEN OF  
12 COURSE JUSTICE KAGAN SAID WE'RE PROBABLY THE LEAST ABLE  
13 NINE PEOPLE TO REALLY UNDERSTAND THE ENTIRETY OF THE  
14 SCENARIOS WE'RE TALKING ABOUT.

15 SO I'M JUST WANTING TO UNDERSTAND REALLY  
16 THE USER EXPERIENCE, NOT -- YOU KNOW, AT SOME POINT IN  
17 THIS LITIGATION IF IT GOES FORWARD, MAYBE WE'LL NEED  
18 SOMETHING ON ALGORITHMS, BUT I -- I AM NOT GOING TO SAY  
19 I TOTALLY UNDERSTAND THE ALGORITHMS, BUT I DO HAVE A  
20 DAUGHTER WHO IS A DATA SCIENTIST WHO DOES MACHINE  
21 LEARNING. AND I HAVE A DEGREE IN CHEMISTRY. SO I HAVE  
22 SOME IDEA OF WHAT AN ALGORITHM IS, BUT WHAT THIS LOOKS  
23 LIKE TO THE USER EXPERIENCE IS WHAT I AM THINKING ABOUT.

24 DOES THAT MAKE DEFENDANTS UNCOMFORTABLE?

25 MR. SCHMIDT: WE DID TALK ABOUT IT ON THE  
26 DEFENSE SIDE, YOUR HONOR; YOUR HONOR HAVING RAISED IT.  
27 WE OBVIOUSLY WANT TO PROVIDE THE COURT WITH WHATEVER  
28 WOULD BE USEFUL TO THE COURT. THE CONCERN THAT WE HAD



1 WAS WE DO THINK IT WOULD MAKE SENSE TO HAVE THE KIND  
2 SCIENCE DAY YOUR HONOR IS TALKING ABOUT. WE ALSO THINK  
3 THAT PROBABLY FURTHER DOWN THE ROAD IT WOULD MAKE SENSE  
4 TO HAVE A SCIENCE DAY ON ACTUAL SCIENCE AND RESEARCH ON  
5 SOME OF THE MERITS ISSUES.

6 WE HAD THOUGHT BOTH OF THOSE WOULD MAKE  
7 SENSE AFTER THE DEMURRER SIMPLY BECAUSE OF THE CONCERN  
8 THAT IF IT TURNS INTO ADVOCACY THROUGH SELECTION OF  
9 SCREEN SHOTS OR SOMETHING LIKE THAT, THAT COULD BE HARD  
10 TO MANAGE IN THE TERMS OF THE PARTIES REACHING ALIGNMENT  
11 ON THAT.

12 WE'RE CERTAINLY OPEN TO CONFERRING ON  
13 THAT WITH THE PLAINTIFFS TO SEE IF THERE ARE GUARDRAILS  
14 WE COULD COME UP WITH TO TRY TO GIVE YOUR HONOR WHAT  
15 YOUR HONOR IS LOOKING FOR WITHOUT IT TURNING INTO WHAT  
16 WE WOULD VIEW AS AN OUTSIDE-THE-RECORD ADVOCACY EXERCISE  
17 BEFORE A DEMURRER, BUT THAT WOULD BE OUR CONCERN ABOUT  
18 DOING IT, IS JUST THE SIMPLE TIMING CONCERN OF DOING IT  
19 BEFORE A DEMURRER AND THE GUARDRAILS FOR IT NOT BEING AN  
20 ADVOCACY EXERCISE TO GO OUTSIDE THE RECORD, OUTSIDE THE  
21 PLEADINGS.

22 MR. VAN ZANDT: YOUR HONOR, WE CERTAINLY WOULD  
23 BE INTERESTED TO MEET AND CONFER AND DISCUSS PARAMETERS  
24 ON THOSE POTENTIAL SCIENCE DAY ISSUES, BUT IN THE  
25 MEANTIME, GIVEN YOUR HONOR'S WISHES TO SEE SCREEN SHOTS  
26 TO UNDERSTAND THE USER EXPERIENCE MORE, WE CERTAINLY  
27 DISCUSSED THAT INTERNALLY, AND WE CAN CERTAINLY  
28 INCORPORATE MORE OF THAT INTO OUR MASTER COMPLAINT THAT

1 WE WILL BE FILING HERE. WE CERTAINLY, OBVIOUSLY, HAVE  
2 AN INTEREST FOR THE COURT TO UNDERSTAND THESE PLATFORMS  
3 AND THESE ISSUES GOING INTO THE DEMURRER BRIEFING, SO  
4 THAT'S SOMETHING WE CAN ADDRESS WITH THE PLAINTIFFS'  
5 SIDE THROUGH OUR INITIAL MASTER COMPLAINT.

6 THE COURT: I DID SEE THAT THERE WERE SCREEN  
7 SHOTS IN THE MDL COMPLAINT. I HAVEN'T READ IT COVER TO  
8 COVER, BUT I DID SEE THERE WERE SCREEN SHOTS THERE.

9 MR. SCHMIDT: IF WE COULD CONFER ON THAT, YOUR  
10 HONOR, WE WOULD APPRECIATE THAT OPPORTUNITY.

11 THE COURT: THAT'S FINE. AND, YOU KNOW, STATE  
12 LAW IS REALLY QUITE STRICT ON NOT CONSIDERING EVIDENCE  
13 OUTSIDE THE RECORD WHEN ONE IS DOING A DEMURRER. I'M  
14 WELL AWARE OF THAT.

15 AND I'LL SAY JUDGE GONZALEZ ROGERS WILL  
16 SPEAK FOR HERSELF, SHE DIDN'T SEEM THAT TAKEN BY THE  
17 IDEA. I WON'T SAY SHE TOLD ME IT WAS A STUPID IDEA,  
18 BUT, YOU KNOW, SHE DIDN'T SAY, OH, LET'S SCHEDULE THAT  
19 SOON. SO I'M NOT SURE THERE IS GOING TO BE A JOINT  
20 SCIENCE DAY. SHE'S GOT A VERY BUSY CALENDAR TOO, AS YOU  
21 PROBABLY KNOW.

22 MR. VANZANT: YOUR HONOR, WE'LL TAKE YOUR  
23 COMMENTS IN CONSIDERATION FOR PURPOSES OF THE COMPLAINT.  
24 AND, OBVIOUSLY, WE WILL BE WILLING TO MEET AND CONFER  
25 WITH DEFENDANTS ON THIS ISSUE.

26 THE COURT: VERY GOOD. I WANT TO BE VERY  
27 DEFERENTIAL TO THE DEFENDANTS IN THIS AREA, QUITE  
28 HONESTLY, BECAUSE IT -- PARTICULARLY AT THE CHALLENGE TO

1 THE PLEADING STAGE, IT SHOULD NOT BE SOMETHING THAT  
2 INTERFERES WITH STATE LAW. OKAY. STATE PROCEDURAL LAW.

3 MR. VAN ZANDT: YOUR HONOR, FINAL ISSUE FOR  
4 ME, JOSEPH VAN ZANDT, WE ARE MEETING AND CONFERRING WITH  
5 DEFENDANTS AND MDL COUNSEL ON A PROPOSED COORDINATION  
6 ORDER FOR THE MDL AND THEN WE'LL POTENTIALLY BE LOOKING  
7 TO PROPOSE A SIMILAR ORDER HERE TO YOUR HONOR. I JUST  
8 WANT TO LET YOU KNOW THAT WAS IN THE WORKS. I THINK THE  
9 SCHEDULE IS CURRENTLY FOR THAT TO BE SUBMITTED TO THE  
10 MDL COURT THIS FRIDAY, A PROPOSED COORDINATION ORDER.

11 THE COURT: I SAW A REFERENCE TO THAT. WHAT  
12 IS A COORDINATION ORDER?

13 MR. CREED: THE COORDINATION ORDER IS  
14 BASICALLY AN ORDER THAT SEEKS TO SORT OF LAY THE GROUND  
15 RULES FOR HOW WE'RE GOING TO -- AS A COURT, MDL COURT  
16 PLAINTIFFS AND DEFENDANTS WILL DRAFT. I THINK WE CAN --  
17 I THINK THE INITIAL DRAFT IS VERY BROAD IN TERMS OF WHAT  
18 IT DID. AND I THINK WE'RE MEETING AND CONFERRING SOON,  
19 AND I AM NOT GOING TO RAISE THOSE ISSUES, BUT IN JUL,  
20 FOR INSTANCE, WE HAD A COORDINATION ORDER BETWEEN THE  
21 STATE COURT AND THE FEDERAL COURT. AND IT LARGELY WAS  
22 JUST SORT OF THE GROUNDWORK FOR MAKING SURE THERE IS  
23 NON-DUPPLICATIVE DISCOVERY ON COMMON ISSUES BETWEEN THE  
24 TWO. IT DIDN'T RESTRICT EITHER PARTY'S RIGHT TO  
25 PROPOUND DISCOVERY, BUT IT'S AN ISSUE THAT WE'RE WORKING  
26 OUT WITH DEFENDANTS. WE THINK THAT IT MAKES SENSE TO  
27 ENTER ONE, BUT, YOU KNOW, WE RESERVE THE RIGHT NOT TO  
28 ENTER ONE IN THIS PROCEEDING.

1 THE COURT: ALL RIGHT. SO I WOULD JUST HAVE  
2 TWO COMMENTS ON THAT. NUMBER ONE, COORDINATION HAS A  
3 SPECIFIC MEANING UNDER STATE LAW, RIGHT. IT WOULD --  
4 THIS IS A COORDINATED PROCEEDING, AND WE HAVE A WHOLE  
5 PROCEDURE WHICH YOU HAVE BEEN THROUGH ON HOW CASES ARE  
6 COORDINATED IN THAT SENSE. SO I THINK, AT LEAST FOR ME,  
7 THAT -- YOU KNOW, THAT NEEDS -- THAT WORD NEEDS TO BE  
8 CONSTRUED IN THE CONTEXT OF WHAT THE RULES OF COURT  
9 PROVIDE FOR COORDINATION, SO TO SPEAK, WHICH YOU HAVE  
10 ALREADY BEEN THROUGH, BUT WHICH COULD HAVE FURTHER  
11 IMPLICATIONS DOWN THE LINE WITH RESPECT TO THIS COURT,  
12 AS YOU KNOW, BEING ABLE TO TRY ALL OF THE CASES, RIGHT,  
13 VERSUS THE FEDERAL COURT WHICH HAS TO REMAND AT SOME  
14 POINT OR ELSE GO SIT IN OHIO TO HEAR AN OHIO CASE,  
15 RIGHT, SO IT'S A DIFFERENT PROCESS. OKAY.

16 THE OTHER THING YOU SHOULD KNOW -- AND,  
17 YOU KNOW, THOSE OF YOU WHO HAVE BEEN INVOLVED IN CASES  
18 IN MY COURT WOULD KNOW, DISCOVERY IS VERY SELDOM OPEN  
19 ENDED IN MY COURT. OKAY. SO THERE WILL BE -- THE  
20 DISCOVERY STAY -- WHEN THE DISCOVERY STAY IS LIFTED,  
21 IT'S NOT GOING TO BE OPEN SEASON ON DISCOVERY. WE WILL  
22 GO THROUGH STAGES OF DISCOVERY.

23 I OFTEN LIKE TO HAVE COUNSEL CONFER ABOUT  
24 THE AVAILABILITY OF DOCUMENTATION BEFORE PROPOUNDING  
25 DISCOVERY SO THAT WE TRY TO AVOID THINGS LIKE, YOU KNOW,  
26 TOTALLY OVERBROAD DISCOVERY WHICH IS TOTALLY OVERBROAD  
27 BECAUSE THE REQUESTING PARTY HAS NO IDEA HOW THE  
28 RESPONDING PARTY KEEPS THEIR DOCUMENTS AND INFORMATION.

1 AND THEN POUND SAND OBJECTIONS BECAUSE IT IS OVERBROAD,  
2 RIGHT, AND SO THEN YOU HAVE WASTED, YOU KNOW, 60 DAYS ON  
3 THAT. AND THEN YOU SIT DOWN FOR THE FIRST TIME AND DO A  
4 MEET AND CONFER ABOUT WHAT IS ACTUALLY AVAILABLE AND  
5 WHAT IS GOING TO BE PRODUCED. I LIKE TO MOVE THAT EVENT  
6 UP TO THE BEGINNING. SO THAT'S ONE THING.

7 I'M ALSO -- I ALSO THINK THAT WHAT I CALL  
8 STAGED DISCOVERY CAN BE A USEFUL WAY TO GO IN SOME CASES  
9 WHERE CORE DOCUMENTS ARE PRODUCED OR CORE INFORMATION IS  
10 PRODUCED WITHOUT THERE BEING AN ASSUMPTION THAT  
11 EVERYTHING HAS BEEN PRODUCED AND MAYBE SAMPLES ARE  
12 PRODUCED AND THAT SORT THING. SO UNLIKE A SITUATION  
13 WHERE YOU HAVE GOT A MAGISTRATE JUDGE WORRYING ABOUT THE  
14 LITTLE STUFF OF THE DISCOVERY, TO ME, DISCOVERY IS  
15 CENTRAL.

16 FOR TWO REASONS: NUMBER ONE, IT SHAPES  
17 THE CASE. AND, NUMBER TWO, IT'S THE MOST EXPENSIVE PART  
18 OF THE CASE. AND WE HAVE IN OUR COMPLEX PROGRAM AN  
19 OBLIGATION TO SERVE THE GOALS OF THE PROGRAM, ONE OF  
20 WHICH IS TO REDUCE LITIGATION COSTS. SO WE DO A LOT OF  
21 HANDS-ON TAKING CARE OF DISCOVERY. AND AT A MINIMUM NO  
22 DISCOVERY MOTION IS FILED BEFORE THERE IS AN INFORMAL  
23 CONFERENCE WITH THE COURT, BUT IN A CASE THIS LARGE I  
24 MANAGE IT BEFORE WE GET INTO THE ACTUAL SUBSTANCE OF THE  
25 DISCOVERY.

26 NOW, HAVING SAID THAT, I AM AWARE THAT IN  
27 THESE LARGER CASES SOMETIMES IT DOESN'T MAKE SENSE TO DO  
28 STAGED DISCOVERY AND PARTIAL DISCOVERY BECAUSE

1 EVERYTHING NEEDS TO BE DONE BEFORE DEPOSITIONS CAN BE  
2 TAKEN. SO I'M AWARE THAT THERE MAY BE ONLY SO MUCH THE  
3 COURT CAN DO TO SAVE LITIGATION COSTS BY USING STAGED  
4 DISCOVERY; NEVERTHELESS, YOU WILL KNOW WHAT YOU ARE  
5 DOING FROM ME.

6 HAVING SAID THAT, THE FEDERAL COURT  
7 STARTED FIRST SO, YOU KNOW, IF THEY ARE GOING FIRST WITH  
8 THE DISCOVERY, I'M HAPPY FOR IT TO BE JUST BROUGHT INTO  
9 THIS CASE. THAT'S OKAY. SO THOSE ARE SOME OBSERVATIONS  
10 YOU MIGHT KEEP IN MIND.

11 MS. SIMONSEN: THAT'S VERY HELPFUL, YOUR  
12 HONOR. THANK YOU.

13 THE COURT: I'LL BE GLAD TO BE THE MAGISTRATE  
14 JUDGE FOR THE FEDERAL CASE TOO IF YOU WANT TO DO IT THAT  
15 WAY. I'M ONLY SORT OF KIDDING, BECAUSE YOU COULD DO THE  
16 DISCOVERY MANAGEMENT IN THIS CASE AND THEN PRODUCE IT IN  
17 THE FEDERAL CASE, BUT THAT'S NOT THE WAY THINGS USUALLY  
18 WORK.

19 ACTUALLY, YEARS AGO, I WILL SAY WHEN WE  
20 HAD COORDINATED CASES, THE MDL'S SEEMED TO GET STARTED  
21 LATER AND WE WOULD HAVE GOTTEN STARTED EARLIER WITH OUR  
22 DISCOVERY. THAT'S NOT SO MUCH THE CASE ANY MORE. THE  
23 FEDS HAVE SEEMED TO HAVE MOVED AHEAD WITH GETTING THE  
24 MDL STARTED, SO ANYWAY. SO JUST SOME THINGS TO KEEP IN  
25 MIND AS YOU ARE DRAFTING THE, QUOTE, UNQUOTE,  
26 COORDINATION ORDER. AND NOW THAT I KNOW WHAT IT IS, I  
27 WILL BE LOOKING AT IT DIFFERENTLY.

28 WE'RE NOT GOING TO HAVE PROBLEMS HERE.

1 WE'VE GOT JUDGE GONZALEZ ROGERS IS VERY COLLEGIAL.  
2 JUDGE WEINSTEIN ORDERED THAT DOCUMENTS PRODUCED IN AN  
3 MDL COULD NOT BE PRODUCED BY THE -- ORDERED THE  
4 DEFENDANT NOT TO PRODUCE THE CASES IN A COORDINATED  
5 CASE.

6 MR. CREED: YEAH, I THINK THAT'S THE KIND OF  
7 THING WE'RE WORKING ON WITH DEFENDANTS.

8 THE COURT: YOU ARE NOT GOING TO HAVE THAT  
9 HERE. OKAY. ALL RIGHT. WELL, WE HAVE A LOT TO DO, BUT  
10 WE'VE GOT KIND OF AN INTERIM PERIOD HERE BEFORE WE CAN  
11 START DECIDING KEY ISSUES.

12 WHEN WOULD YOU LIKE TO COME BACK FOR A  
13 CHECK-IN?

14 MR. SCHMIDT: YOUR HONOR, WE MIGHT SUGGEST TWO  
15 MONTHS.

16 MR. CREED: I THINK WE WOULD SUGGEST EARLIER,  
17 YOUR HONOR, GIVEN SOME OF THESE ARE OTHER ISSUES THAT  
18 ARE PERCOLATING WITH THE PRESERVATION ORDER AND A  
19 PROTECTIVE ORDER AND THE PLAINTIFF FACT SHEET MEET AND  
20 CONFER.

21 THE COURT: WELL --

22 MR. CREED: AND THE CSAM PRESERVATION ORDER.

23 THE COURT: HOW ABOUT SOMETHING THE FIRST WEEK  
24 IN MAY, WOULD THAT MAKE SENSE? AND IF SOMETHING RIPENS  
25 IN THE MEANTIME LIKE, FOR EXAMPLE, THE CSAM ORDER, YOU  
26 KNOW, YOU WILL BE POSTING THE PROBLEMS AND WE'LL BE  
27 FIGURING OUT. YOU KNOW, WE MIGHT HAVE JUST A CONFERENCE  
28 TO DEAL JUST WITH THAT ISSUE, FOR EXAMPLE.

1 SO IF I COULD HAVE A DATE THE FIRST WEEK  
2 IN MAY. WE'RE GOING TO HAVE TO DO EITHER A 9:00 A.M. OR  
3 1:45. DO WE HAVE ANYTHING IN THE AFTERNOON? WE'LL DO  
4 9:00 A.M. MAY 3 AT 9:00 A.M. OKAY.

5 FIRST OF ALL, I ALSO WANT TO APOLOGIZE  
6 FOR CHANGING THE TIME OF TODAY'S HEARING, AND I  
7 APPRECIATE YOUR ACCOMMODATION ON THAT. THANK YOU.

8 MR. VANZANT: YOUR HONOR, JOSEPH VAN ZANDT,  
9 MAY 3RD WORKS FOR THE PLAINTIFFS, BUT ME, PERSONALLY,  
10 I'M SCHEDULED TO BE IN TRIAL IN THE NORTHERN DISTRICT OF  
11 CALIFORNIA FOR ABOUT A MONTH SO THAT WILL BE RIGHT IN  
12 THE MIDDLE OF THAT. SO IN CASE I'M NOT HERE, THAT WILL  
13 BE THE REASON FOR THAT. THANK YOU.

14 THE COURT: OKAY. THANK YOU. SURE.

15 MAY 3, 9:00 A.M.

16 MR. SCHMIDT: THANK YOU, YOUR HONOR.

17 THE COURT: PLEASE FILE A JOINT STATUS --  
18 REPORT I AM GOING TO SAY BY NOON ON MAY 1. OKAY, NO  
19 LATER THAN NOON. SO PLAINTIFF LIAISON COUNSEL TO GIVE  
20 NOTICE. I WILL GET OUT A MINUTE ORDER TODAY WITH MY  
21 EXPRESSION OF WHAT WE DECIDED TODAY, OKAY, WHAT FUTURE  
22 THINGS ARE ON TAP. OKAY. VERY GOOD. THANK YOU.

23 MR. CREED: THANK YOU, YOUR HONOR.

24 MR. SCHMIDT: THANK YOU, THANK YOU.

25 MS. SIMONSEN: THANK YOU, YOUR HONOR.

26 MR. VANZANT: THANK YOU, YOUR HONOR.

27 MS. CLEOFE: THANK YOU, YOUR HONOR.

28 (PROCEEDING ADJOURNED AT 10:10 A.M.)



SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 12

HON. CAROLYN B. KUHL, JUDGE

IN RE: SOCIAL MEDIA ADOLESCENT  
ADDICTION

CHRISTINA ARLINGTON SMITH, INDIVIDUALLY  
AND AS SUCCESSOR-IN-INTEREST TO

LALANI WALTON, DECEASED;  
HERIBERTO ARROYO, INDIVIDUALLY AND AS  
SUCCESSOR-IN-INTEREST TO  
ARRIANA JAILEEN ARROYO, DECEASED;  
CHRISTAL ARROYO, INDIVIDUALLY, AND  
JESSICA WILLIAMS, INDIVIDUALLY AND AS  
SUCCESSOR-IN-INTEREST TO ZAIDEN  
BALDWIN, DECEASED,

PLAINTIFFS,

VS.

TIKTOK, INC.; BYTEDANCE, INC.;  
DOES 1 THROUGH 100, INCLUSIVE,

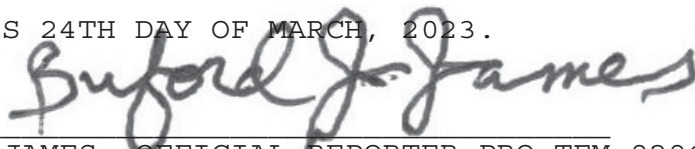
DEFENDANTS.

JCCP 5255

REPORTER'S CERTIFICATE

I, BUFORD J. JAMES, CSR 9296, OFFICIAL  
REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE  
FOREGOING PAGES 1 THROUGH 36, INCLUSIVE, COMPRISE A FULL,  
TRUE, AND CORRECT TRANSCRIPT OF THE TESTIMONY AND  
PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER ON WEDNESDAY  
MARCH 22, 2023.

DATED THIS 24TH DAY OF MARCH, 2023.



BUFORD J. JAMES, OFFICIAL REPORTER PRO TEM 9296

Social Media Cases  
JCCP5255, 03/22/2023

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MOTION  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: SOCIAL MEDIA ADOLESCENT  
ADDICTION/PERSONAL INJURY  
PRODUCTS LIABILITY LITIGATION

MDL No. 3047

CASE NO.: 4:22-md-3047

Honorable Yvonne Gonzalez Rogers

This Document Relates to:

ALL ACTIONS

**[PROPOSED] ORDER GRANTING  
MOTION FOR RELIEF FROM  
NONDISPOSITIVE PRETRIAL  
ORDER OF MAGISTRATE JUDGE**

Before the Court is Plaintiffs’ Motion for Relief from Nondispositive Pretrial Order of Magistrate Judge. Dkt. 303. The Court agrees with Plaintiffs that it would be unduly restrictive and unnecessary under the circumstances presented by this products liability action to require Plaintiffs to disclose the identity of their experts, including their consulting experts, to Defendants before sharing documents designated highly confidential. *See Corley v. Google, Inc.*, No. 2016 WL 3421402, at \*3 (N.D. Cal. June 22, 2016); *Johnson v. City and County of San Francisco*, 2011 WL 13377688, at \*1–3 (N.D. Cal. Feb. 9, 2011). The Court further notes that the Parties have agreed to deal with source code, which may require a higher degree of protection, via separate order.

[PROPOSED] ORDER GRANTING MOTION FOR RELIEF  
FROM NONDISPOSITIVE PRETRIAL ORDER OF M.J.  
No. 4:22-MD-03047-YGR

1 Accordingly, the Court **STRIKES** Section 7.6 of the Protective Order (Dkt. 290). The  
2 Court **ORDERS** Plaintiffs to refile the Protective Order, replacing the struck language with the  
3 following:

4 7.6 Documents designated as “HIGHLY CONFIDENTIAL (COMPETITOR)”  
5 will be treated in the same manner as documents designated “CONFIDENTIAL,”  
6 except that the documents may not be disclosed to the individual Plaintiffs or  
7 officers, directors, and employees of the Receiving Party (if an entity), including  
8 House Counsel, unless that person otherwise meets the requirements of 7.4(h) or  
9 (j).

10 *Alternative: The Court **ORDERS** Plaintiffs to refile the Protective Order, replacing the struck*  
11 *language with the following:*

12 7.6 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
13 CONFIDENTIAL (COMPETITOR)” Protected Material to Experts. “HIGHLY  
14 CONFIDENTIAL (COMPETITOR)” information or items may be disclosed to an  
15 Expert without disclosure of the identity of the Expert as long as the Expert is not  
16 a current officer, director, or employee of a competitor of a Party or anticipated to  
17 become one.

18 **IT IS SO ORDERED.**

19 DATED:

20 \_\_\_\_\_  
21 HON. YVONNE GONZALEZ ROGERS